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*A Report to the Governor
and the
55th Legislature
of the Juvenile Justice
and Mental Health Study Commission*

December 1996

Prepared by
Montana Legislative Services Division
State Capitol, Room 138
Helena, Montana 59620



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"IT TAKES A FAMILY, SCHOOL, COMMUNITY . . ."

**A Report of the
Juvenile Justice and Juvenile Mental Health
Study Commission
to the Governor and the
55th Legislature**

December 1996

**Prepared by Susan Byorth Fox, Legislative Research Analyst
Office of Research and Policy Analysis
Montana Legislative Services Division**

DATE DUE

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**JUVENILE JUSTICE AND MENTAL HEALTH STUDY COMMISSION
MEMBERSHIP**

Senator Mike Halligan, Presiding Officer, Missoula
Jani McCall, Vice Presiding Officer, youth treatment provider representative,
Billings
Senator Mike Sprague, Billings
Representative Linda McCulloch, Missoula
Representative Brad Molnar, Laurel
Craig Anderson, Youth Justice Advisory Council representative, Juvenile
Probation Officer, Glendive
Fred Anderson, public representative, Custer County High School Principal,
Miles City
Robin Bullock, victim representative, Butte
Derek Cabrera, former youth in system, Montana Conservation Corps, Bozeman
Larry Epstein, County Attorney, Glacier County, Cut Bank
Janice Henderson, parent representative, Lolo
Honorable John Larson, Youth Court Judge, Missoula
Richard Meeker, Juvenile Probation Officer, Helena
Lois Poulton, Justice of the Peace, Winnett
Candace Wimmer, Juvenile Justice Planner, Board of Crime Control
Hank Hudson, Administrator, Child and Family Services Division, Department
of Public Health and Human Services
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PREFACE

**HOUSE BILL NO. 240
INTRODUCED BY SOFT, HALLIGAN
BY REQUEST OF THE BOARD OF CRIME CONTROL**

AN ACT ESTABLISHING THE JUVENILE JUSTICE AND JUVENILE MENTAL HEALTH STUDY COMMISSION; PROVIDING FOR APPOINTMENTS TO THE COMMISSION; DIRECTING THE COMMISSION TO CONDUCT A COMPREHENSIVE REVIEW AND ASSESSMENT OF THE MONTANA JUVENILE JUSTICE SYSTEM AND JUVENILE MENTAL HEALTH SYSTEM; APPROPRIATING FUNDS FOR THE OPERATION OF THE COMMISSION; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE.

WHEREAS, the Montana Youth Court Act is now 20 years old and has been both amended and litigated numerous times; and

WHEREAS, juvenile court and probation philosophy and practice have changed; and

WHEREAS, national attention has been focused on the issue of youth violence; and

WHEREAS, a performance audit report issued by the Legislative Auditor in June 1993 concluded that Montana's juvenile justice system suffers from a lack of coordination and that current reforms are occurring without a formal planning process; and

WHEREAS, the 54th Legislature will be asked to consider amending several major provisions of the Montana Youth Court Act; and

WHEREAS, it is important to strike a balance that protects the community from delinquent youth, imposes accountability for offenses, and equips juvenile offenders with the competencies to live productively in the community; and

WHEREAS, it is important to consider issues such as initiation of proceedings, jurisdiction and transfer, rights of youth, procedure before the youth courts, disposition, confidentiality, and mental health considerations in order to achieve a balance; and

WHEREAS, it is important that all services to youth in the juvenile justice system and mental health services delivery system be coordinated in a single, seamless continuum of care and treatment.

THEREFORE, the Legislature finds it appropriate that an interim commission be established and assigned to complete a comprehensive review

and assessment of the Montana juvenile justice system and the mental health services delivery system for youth and develop a plan to ensure the effective and efficient delivery of services to all youth in those systems.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Juvenile justice study commission -- composition -- vacancies. (1) There is a juvenile justice study commission.

(2) The commission is composed of the following members:

(a) two members of the house of representatives, one from each party, appointed by the speaker of the house;

(b) two members of the senate, one from each party, appointed by the president of the senate;

(c) a citizen representing the public at large, appointed by the governor;

(d) a youth court judge, appointed by the governor;

(e) a justice of the peace, appointed by the governor from three candidates nominated by the Montana magistrates' association;

(f) a member of the youth justice advisory council, appointed by the governor from three candidates nominated by the board of crime control;

(g) a parent or guardian of a youth being treated or supervised, appointed by the governor;

(h) a juvenile probation officer appointed by the governor from three candidates nominated by the Montana juvenile probation officers association;

(i) a county attorney, appointed by the governor from three candidates nominated by the county attorneys association;

(j) a victim of a violent crime committed by a youth, appointed by the governor;

(k) a member of a private agency that provides treatment services to youth, appointed by the governor;

(l) a young adult who was formerly adjudicated to be a juvenile delinquent or youth in need of supervision, appointed by the governor; and

(m) one employee each of the department of family services, the board of crime control, and the department of corrections and human services, who shall serve as nonvoting members.

(3) The members of the commission shall elect a presiding officer from among the members.

(4) A vacancy occurring on the commission must be filled in the same manner as the original appointment.

Section 2. Meetings. (1) The presiding officer shall schedule meetings of the commission as considered necessary and shall give notice of the time and place of each meeting to the members of the commission. At least one meeting must be held in each mental health region.

(2) The commission may adopt rules of procedure for the conduct of its meetings.

Section 3. Reimbursement of expenses -- compensation. (1) Each member of the commission, except the legislative members appointed under [section 1], is entitled to reimbursement for expenses as provided in 2-18-501 through 2-18-503.

(2) A legislative member appointed under [section 1] is entitled to compensation and expenses as provided in 5-2-302.

Section 4. Powers and duties -- staff support -- recommendations -- report. (1) The commission shall make a thorough study of the juvenile justice system and youth mental health services delivery system. The study must include:

(a) a comprehensive review of past and present programs used to successfully rehabilitate youth and reduce juvenile crime;

(b) a review of methods and programs in other states and nations that have been documented as a success in treating and rehabilitating youth;

(c) the development of a juvenile justice and mental health treatment continuum that provides for community protection, youth accountability, youth competency, meaningful restitution, and successful reintegration of youth into the community;

(d) a definition and delineation of the roles and responsibilities of the department of family services and other state and local government agencies working with youth;

(e) a definition and delineation of the roles and responsibilities of the juvenile justice system and the youth mental health services delivery system; and

(f) a review of the effectiveness and efficiency of each state youth correctional facility and of each detention facility operated by the state, including the feasibility of privatizing each facility.

(2) The legislative council shall supply staff support to the commission.

(3) The commission is authorized to secure information of any type from any agency, board, or commission or from any independent organization. Any

state agency, board, or commission shall supply information upon the request of the commission.

(4) On or before December 1, 1996, the commission shall submit to the 55th legislature a report of its findings and conclusions. The report must contain recommendations for legislation, including a draft of the proposed legislation. The report must also contain a discussion related to any area of study for which the commission does not recommend legislation and an explanation of why legislation is not recommended.

Section 5. Authority to accept funding -- appropriation of federal funds.

(1) The legislative council is authorized to accept funds appropriated from the board of crime control for the purpose of conducting the study identified in [section 4].

(2) There is allocated to the legislative council from the youth justice advisory council \$20,000 in funds granted to the state board of crime control for the youth justice council by the federal office of juvenile justice and delinquency prevention. The funds may be used only for fulfilling the duties of the commission, including:

(a) reimbursing or compensating the members as provided in [section 3];

(b) contracting for services to execute the study to be conducted by the commission; and

(c) paying other expenses incurred by the commission or the legislative council in completing the study.

(3) Funds allocated to the legislative council on behalf of the commission but not expended prior to the termination date specified in [section 7] must be returned to the youth justice advisory council within 60 days of the termination date.

(4) The funds identified in this section must be deposited in quarterly installments that are sufficient to meet the commission's costs for each quarter in an account in the state special revenue fund to the credit of the legislative council. The first installment must be deposited on or before July 1, 1995. The legislative council staff may not begin work on the study until the first installment has been deposited.

Section 6. Effective date. [This act] is effective July 1, 1995.

Section 7. Termination. [This act] terminates June 30, 1997.

-END-

INTRODUCTION

At the risk of taking flak, the title of this report paraphrases the title of the recent publication It Takes A Village: And Other Lessons Children Teach Us, by the First Lady, Hillary Rodham Clinton. The titles of the First Lady's book and of this report basically sum up the findings of the Juvenile Justice and Juvenile Mental Health Study Commission quite aptly. Raising our young is a difficult task, and no single family, school, or community can do it alone. Good families have hard times and need help. Good children have hard times and need help. As the Commission delved into the world of juvenile justice and mental health, the members and staff discovered that it is an incredibly complex network of systems and programs. If for some reason the help is not available, the trouble can increase and the problems can deepen and often come to the attention of the justice system. The justice system is grounded in each community. It is within the justice system that many youth receive services from other systems, such as the mental health system or the child welfare system. All children attend school at one time or another, and schools may or may not interact with the other agencies from whom a child is receiving services. The greater the problems, the more areas of a youth's life are affected and must be addressed by the solutions.

This report is not written as a piece of nonfiction to be read from cover to cover. It is written as a reference tool and guide to the many areas that the Commission studied. Chapters 1 and 2 offer information about how the Commission came about and its activities over the 1995-96 interim. Chapter 3 offers a brief history of the area of juvenile justice, some state and national statistics, an overview of juvenile justice and mental health services in the state, a summary of some of the Legislative Audit Division findings from a 1993 performance audit of juvenile justice in Montana, and a description of the mental health system. The Commission's findings are described in Chapter 4, and their recommendations are summarized in Chapter 5. Chapter 6 presents the conclusions of how the Commission fulfilled the mandates of House Bill No. 240 as well as some areas that warrant future study. The Appendix contains an inventory of juvenile justice and mental health resources in the state. It is organized by level of government and state agency and includes an organizational chart and map of resources. There is some limited budget information included.

The reader should use the Table of Contents for reference and pick and choose the areas of most interest. The author was not able to capture everything that the Commission discussed or heard, but the minutes of the meetings are available through the Legislative Services Division.

The terms "child", "children", "youth", and "juvenile" are used interchangeably throughout this report. The various sources often use a specific term, and the author retained that term to preserve the essence that the sources intended. Generally, all of the terms refer to persons under 18 years of age. The terms "child" and "children" tend to denote those who are younger, but also imply a role in a family. "Youth" is intended to be a very general term and all inclusive and is the term used in the Montana Youth Court Act. "Juvenile" means the same thing, but tends to be associated with delinquency and carries that negative connotation.

CHAPTER 1

BACKGROUND

House Bill No. 240 (Ch. 436, L. 1995) created the Juvenile Justice and Juvenile Mental Health Study Commission (Commission). House Bill No. 240 began as a study of the Montana Youth Court Act, the statutes that govern the juvenile justice system. Greater legislative attention was placed on the Youth Court Act because of proposals contained in other bills. As House Bill No. 240 moved through the system, it evolved into a study of the broader spectrum of juvenile services, not only the justice system, but also the juvenile mental health system.

1995 Legislative Action

The 1995 Legislature enacted four other significant pieces of legislation regarding juvenile issues: House Bill No. 150 (Ch. 403), clarifying the composition and duties of a youth placement committee; House Bill No. 380 (Ch. 438), establishing extended jurisdiction prosecution; House Bill No. 429 (Ch. 466), generally revising the Youth Court confidentiality provisions; and House Bill No. 540 (Ch. 528), generally revising the Youth Court Act. The traditional view of the juvenile court system was being challenged with demands to make offending youths more accountable for their actions, demands for greater community protection, and demands to reduce juvenile violence and crime.

In addition to the five bills directly affecting juvenile issues, legislation was enacted that reorganized several Executive Branch agencies that affect juvenile corrections and juvenile mental health services. The Juvenile Corrections Division of the former Department of Family Services was transferred to the new Department of Corrections. The remainder of the former Department of Family Services and the human services programs of the former Department of Corrections and Human Services was transferred to the new Department of Public Health and Human Services. The sum effect of these legislative actions resulted in significant changes to the administration of state juvenile justice and mental health services.

Mental Health Changes

Mental health services are experiencing further change. The Legislature, in a 1993 Special Session and in the 1995 Session, enacted legislation authorizing the Department of Social and Rehabilitation Services (now the Department of Public Health and Human Services) to pursue a managed care program for public mental health services. The Request for Proposals (RFP) process has been ongoing for the past two years and has included an application for a federal waiver. On August 2, 1996, Montana received a waiver from the Health Care Financing Administration of the U.S. Department of Health and Human Services to implement the Medicaid-funded aspects of the new mental health access plan. On August 12, 1996, the RFP was released. The deadline for proposal submission was October 8, 1996. The Department of Public Health and Human services anticipated awarding the contract to a managed care organization in mid-November and beginning the implementation of the contract in December.*

House Bill No. 240

As enacted, House Bill No. 240 created the Juvenile Justice and Juvenile Mental Health Study Commission. The Commission was composed of 17 members including legislators, and representatives of the public, victims, parents, youth offenders, youth services providers, state agencies, Youth Court, Justice Court, juvenile probation, County Attorneys, and the Youth Justice Advisory Council. The final "whereas" clause in the preamble of House Bill No. 240 stated that an interim committee was being established to:

complete a comprehensive review and assessment of the Montana juvenile justice system and the mental health services delivery system for youth and develop a plan to ensure the effective and efficient delivery of services to youth in those systems.

Section 4 of House Bill No. 240 gave strong direction for the course of the study:

* On November 14, 1996, the Department of Public Health and Human Services awarded the contract for the managed care of public mental health programs to Montana Community Partners, a non-profit joint venture between CMG Health Inc., a for-profit corporation based in Owings Mills, Maryland, and the Care Coalition of Montana, a non-profit Montana Corporation.

The Commission shall make a thorough study of the juvenile justice system and youth mental health services delivery system. The study must include:

(a) a comprehensive review of past and present programs used to successfully rehabilitate youth and reduce juvenile crime;

(b) a review of methods and programs in other states and nations that have been documented as a success in treating and rehabilitating youth;

(c) the development of a juvenile justice and mental health treatment continuum that provides for community protection, youth accountability, youth competency, meaningful restitution, and successful reintegration of youth into the community;

(d) a definition and delineation of the roles and responsibilities of the department of family services and other state and local government agencies working with youth;

(e) a definition and delineation of the roles and responsibilities of the juvenile justice system and the youth mental health services delivery system; and

(f) a review of the effectiveness and efficiency of each state youth correctional facility and of each detention facility operated by the state, including the feasibility of privatizing each facility.

House Bill No. 240 also directs the Commission to submit to the 55th Legislature a report of its findings and conclusions. The report must contain recommendations for legislation, including a draft of the proposed legislation. The report must also contain a discussion related to any area of study for which the Commission does not recommend legislation and an explanation of why legislation is not recommended.

Balanced and Restorative Justice

The Commission was invited to a preinterim meeting by the Youth Justice Advisory Council that featured Kay Pranis of the Minnesota Department of Corrections. She spoke on the philosophy of Balanced and Restorative Justice (BARJ) adopted by the Montana Youth Justice Advisory Council as "the hallmark of good program and philosophy"¹ and as the measure by which to judge the programs that are applying for grant funds and the programs that are receiving the funds. The concepts are quoted in the mission statement of the Department of Corrections and the purpose statement of the Youth Court Act.

The philosophy of BARJ includes three goals: community protection, accountability, and competency development. BARJ is based on the precept that the community is a party to any offense committed by its youth and that, as such, the community needs to be protected and to feel safer if justice is to have been served. Youth must be held accountable for their actions in order for the victim to experience justice. How to accomplish the goal of reintegration of an offender into the community has to be determined by developing whatever competencies a youth needs to participate positively in society. The offenders generally return to the community, so the community must participate in the justice system for it to be in balance. The Commission took no action specifically on the BARJ approach but heard testimony from practitioners in the justice community that have adopted the approach.

~ ~ ~

1. July 3, 1996, letter to Governor Marc Racicot from Randy H. Bellingham, Chairman, Youth Justice Advisory Council.

CHAPTER 2

COMMISSION ACTIVITIES

Meetings and Public Hearings

The Commission held seven, two-day meetings across the state. House Bill No. 240 directed the Commission to hold a public hearing in each of the five mental health regions in the state. The Commission also held a preinterim meeting funded by the Youth Justice Advisory Council in Helena in June of 1995. The Commission held meetings in Miles City (Region I), Kalispell (Region V), Billings, (Region III), Helena (Region IV), Great Falls (Region II), and Missoula (Region V). The Commission's final meeting was held in Helena.

The Commission had an extensive interested persons list of approximately 500 persons. The list contained juvenile probation offices, Tribal Courts, youth and other advocacy organizations, Justices of the Peace, County Attorneys, police and sheriff's offices, private mental health and other providers, Managing Resources Montana team and board members, residential treatment programs, mental health centers, District Court Judges, interested legislators, state and federal agencies, and many others. A press release was sent to all daily newspapers and to each weekly newspaper for each meeting in the mental health region that the Commission was visiting. Media coverage of the Commission meetings varied across the state.

Each meeting consisted of a public hearing, testimony from juvenile justice and mental health professionals, tours of local facilities or presentations by area programs, reorganization updates, and Commission and Subcommittee work sessions.

The first meeting was held in Miles City. The Commission utilized the Telemedicine Network and had multiple, videoconference sites to allow additional public attendance. The Commission held part of its meeting and heard presentations at the Pine Hills School and at the Mental Health Center. The Commission members received a copy of the Montana Youth Court Act: 1995 Overview and a report from the Legislative Auditor's staff on the 1993 and 1995 performance audits of juvenile justice in Montana.

The second meeting began with a tour of the Swan River Correctional Facility (boot camp) and concluded with the remainder of the meeting in Kalispell. The

Commission toured the Flathead County Detention Facility. It was at this meeting that the Commission divided into three Subcommittees and determined one of the following areas for each to study: the Youth Court Act, Mental Health and Justice, and Systems Organization. The Commission meeting was scheduled to also allow Commission members to participate in a Key Decision Maker Project conference hosted by the Center for the Study of Youth Policy.

The third meeting was held in Billings, and the Commission toured the Youth Services Center and the Yellowstone Treatment Center. In its first three meetings, the Commission had experienced a great deal of testimony dealing with child protective issues with the Department of Family Services, which was generally out of the purview of the Commission but interrelated in the minds of the families in the system. It was an important lesson for the Commission to realize that the systems are confusing to the public and that many of these families are in contact with multiple systems at the same time.

The fourth meeting was held in Helena and had an education theme. The Commission received updates on the Attorney General's Juvenile Violence Task Force and the Joint Oversight Committee on Children and Families. Presentations were made on the Montana Youth Alternatives Programs, sex offender data collection, school safety teams and violence, special education, a local alternative high school and adolescent treatment program and local juvenile probation programs.

The fifth meeting was held in Great Falls. The Commission toured the Cascade County Youth Services Center and received an update from the Attorney General's Juvenile Violence Task Force. Staff of the Department of Corrections reported on the initial recommendations that would be presented to the Legislature. The Subcommittees began to report their findings and recommendations.

The sixth meeting was held in Missoula. The Commission participated in a roundtable discussion with youth from area high schools. Updates were received from the Youth Violence Task Force and a Department of Corrections task force. Information on the potential effects of two Subcommittee proposals, involving driver's license revocation and suspension for minors in possession, was received from staff of the Department of Justice. Representatives from the Juvenile Probation Officer's Association shared their proposals with the Commission. The Subcommittees reported their final

recommendations to the full Commission, who forwarded the majority of the proposals to the final meeting for adoption.

The seventh and final meeting was held in Helena. The Commission held a second roundtable discussion with area youth who had varying levels of involvement with the justice system. The Commission participated in a conference call with a former Office of Juvenile Justice and Delinquency Prevention consultant regarding the Serious Habitual Offender Comprehensive Action Program (SHOCAP). The Commission finalized their findings and adopted recommendations.

Subcommittee Work

At the second meeting of the Commission, three subcommittees were appointed to work in closer detail on three areas of the study: the Youth Court Act, Mental Health and Justice, and Systems Organization. The Subcommittees worked on specific issues at each Commission meeting. The membership and the issues for each Subcommittee were as follows:

YOUTH COURT ACT

Larry Epstein, Chair

Representative Brad Molnar, Vicechair

Janice Henderson

Dick Meeker

Honorable John Larson

Candy Wimmer

(Senator Mike Halligan)

- restitution
- status offenders/truancy
- confidentiality
- parental rights and responsibility
- detention

MENTAL HEALTH/JUSTICE

Craig Anderson, Chair

Representative Linda McCulloch, Vicechair

Derek Cabrera
Robin Bullock
Senator Mike Sprague
(Jani McCall)

- drug/alcohol abuse
- conduct disorder
- sex offenders
- long-term and secure care for boys and girls

SYSTEMS ORGANIZATION/COORDINATION

Jani McCall, Chair
Fred Anderson, Vicechair
Lois Poulton
Mike Ferriter
Hank Hudson
(Senator Mike Halligan)

- provider and agency coordination
- reservation coordination
- early intervention/prevention
- school issues/alternative education

At each Commission meeting, the Subcommittees reported their work, and at the fifth and sixth meetings, the Subcommittees presented tentative recommendations. Most of these recommendations were endorsed by the Commission in its final recommendations, and those will not be reiterated here. The recommendations that were not forwarded will be discussed briefly.

The Mental Health and Justice Subcommittee expressed a concern that the Commission needed to explore the involuntary commitment laws for youth and to define the responsibilities within the Youth Court Act regarding danger to others and the mental health laws regarding danger to self. The Commission did not address this issue because there was a group of state agency personnel working on this who had not finalized any proposals with regard to mental health commitments for youth.

The Systems Organization Subcommittee had initially included a recommendation that general education tuition that is charged to an out-of-district student be placed in the miscellaneous fund to be used for specific costs incurred by the district in educating the student. The Commission made a recommendation to this effect regarding special education funds but did not recommend the same for general education tuition as the major concern was with special education youth and their impact on the new school district. Further, the Commission did not wish to run afoul of equalization concerns.

The Systems Organization Subcommittee and the Youth Court Act Subcommittee both recommended that habitual truancy and ungovernability be treated as misdemeanor crimes in Justice, Municipal, and City Courts. The Commission did not pursue this recommendation because of concerns by Justices of the Peace that their courts would be swamped with additional cases and that they would not have the resources to absorb this responsibility. Adding to their burgeoning caseloads would only delay the consequences for these youth, which may exacerbate the problem of disrespect of the system and the belief that nothing would happen to them. The Juvenile Probation Officer's Association recommended a similar approach, intending that status offenders be removed from the Youth Court's responsibility, although the Association did not specify to whom the responsibility should go. The Commission believed that transferring the cases without additional resources would not solve any of the problems; instead, they pursued an alternative recommendation to create the "youth in need of intervention" and assessment programs in order to provide immediate sanctions and additional resources for the status offenders.

Recommendations that the Commission adopted will specifically enumerate that running away and truancy are offenses under the Youth Court Act and that habitual truancy will be dealt with through greater use of graduated sanctions.

The Youth Court Act Subcommittee was pursuing alternative forms of detention such as secure holdovers (by current definition, holdovers are nonsecure). The "youth in need of intervention" recommendation was pursued instead.

The Youth Court Act Subcommittee considered a proposal revising the penalties applicable to persons under 18 years of age who are convicted of the offense of possession of an intoxicating substance. Some of the considerations included revocation or suspension of the driver's license. Information received

from the Department of Justice's legal staff indicated that revocation or suspension of driver's licenses may have unintended consequences of higher car insurance premiums or of an entire family being dropped from insurance. Youth under 15 years of age do not have driver's licenses and would be unaffected, the consequences for regaining a license after revocation are difficult, and many families rely on teen drivers for family reasons. A Minors in Possession Task Force had made changes to the statutes in 1995, and the Department of Justice recommended leaving the statutes alone until the result of the 1995 changes is known.

The Youth Court Act Subcommittee also raised the issue of the manner of funding detention. The Commission acknowledged the concern by making a finding but did not pursue any additional changes. The Commission found that juvenile detention costs are currently partially reimbursed through a grant program and that transportation costs are a significant issue and should remain a reimbursable cost.

Serious Habitual Offender Comprehensive Action Program

The Commission expressed interest in hearing of the Serious Habitual Offender Comprehensive Action Program (SHOCAP). SHOCAP is a program that was introduced by the Office of Juvenile Justice and Delinquency Prevention (OJJDP) in 1983. SHOCAP seeks to improve public safety by involving those who work in law enforcement, prosecution, education, probation, corrections, and social services in a cooperative process to share information and manage juvenile justice cases. The program provides the structure for focusing attention on serious habitual offenders and enhances the quality and relevance of information exchanged through active interagency collaboration.¹

The Commission held a conference call at their last meeting with Robert O. Heck, a retired consultant who developed SHOCAP for the OJJDP. Mr. Heck informed the Commission of his 94%-4%-2% theory. Ninety-four percent of all the youth who come in contact with the juvenile justice system need only to be recorded as impacting the system and if they are treated with benign neglect will turn out fine. Four percent of youth are chronic repeat offenders and continue to hit the system. Prevention and treatment programs must be focused on this 4%. Mr. Heck said that currently, most grant money for treatment and prevention programs is going for good-bad kids. They may be trouble on the street but they are not criminals, and Mr. Heck added that almost

all of the rehabilitation programs that he has seen are poorly directed toward the wrong youth.

Two percent of the serious habitual offenders are incorrigible and are career criminals. Mr. Heck believes that they must be, for the rest of their life, incarcerated, supervised, or under some type of control or they will die. SHOCAP was intended as a way to identify the youth 14 to 17 years of age who were serious habitual offenders.

The Commission struggled with basic principles similar to SHOCAP regarding the Montana systems. Testimony was received that the various entities involved with youth are not cooperating and collaborating as they should and that information is not being shared with all parties as needed. Because of the delay in receiving Mr. Heck's testimony, the Commission did not act on SHOCAP specifically, but many of its recommendations reflect the principles that led to the development of SHOCAP. SHOCAP is most effective in larger communities, and Mr. Heck recommended that for Montana's purposes, a regional or statewide system would probably be the most effective. There is nothing in Montana's statutes to prevent Montana law enforcement or other entities from instituting a program such as SHOCAP.² The OJJDP provides a training and technical assistance program for jurisdictions interested in SHOCAP and has included it as a component of the Comprehensive Strategy for Serious, Violent, and Chronic Juvenile Offenders.³

National Speakers

The Commission was privileged to hear from the following national speakers:

Kay Pranis, Restorative Justice Planner, Department of Corrections, Minnesota
Dr. Marina Barnett, Center for the Study of Youth Policy, Philadelphia PA
Shannon Wilbur, Youth Law Center, San Francisco, CA
Lew Whitney, Northwest Regional Educational Laboratory, Portland, OR
Hunter Hurst, III, National Center for Juvenile Justice, Pittsburgh, PA
Robert O. Heck, retired consultant, SHOCAP

Staff Presentations on Behalf of the Commission

Many organizations were interested in the Commission's activities and invited staff to make presentations regarding the Commission's progress. Staff made presentations to the following organizations:

State Special Education Advisory Council
Children's Committee of the Mental Health Association of Montana
Montana Association of Counties
Attorney General's Task Force on Juvenile Violence
Joint Oversight Committee on Children and Families
Casey Family Program Child Welfare Conference
Montana Children's Alliance
Montana Association of Homes and Services for Children

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1. U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, Fact Sheet #35, August 1996.
2. Juvenile Justice and Mental Health Commission minutes, September 9, 1996.
3. U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, Fact Sheet #35, August 1996.

CHAPTER 3

JUVENILE JUSTICE AND MENTAL HEALTH SERVICES

Brief History of Juvenile Justice

Juvenile justice has developed from the doctrine of *parens patriae*, "parent of the country" or "common guardian of the community". Under this doctrine, the right of the state superseded parental rights if the parents were seen as unfit or not up to the task of the education, training, and moral development of their child.

The philosophy of youth conduct as distinct from that of adults evolved to the extent that the first separate juvenile court was established in the United States in Illinois in 1899¹. The current juvenile justice systems were developed after World War II and were characterized by a centralized administration of juvenile facilities with training and treatment as its goals, rather than retribution. This continued to be an institutional model. In the 1960s, with Massachusetts in the lead, the trend began toward deinstitutionalization and developing community-based services. The philosophy was changing in response to escalating costs, violence, and tension related to race relations in the country as a whole. Montana has had separate statutes for the processing of delinquent youth since 1907 (Ch. 126, L. 1907). The statutes were recodified in 1943, and the current Youth Court Act was enacted in 1974.

The juvenile justice system is intended to be a civil procedure, not a criminal procedure. It is more of a hybrid in actuality, but where the procedures mimic the criminal system, youth are entitled to the same rights as adults under the Montana Constitution, Article II, section 15. There are provisions to transfer youth, dependent on age, to District Court for certain crimes and the youth is then subject to the same criminal justice system as adults. The only difference may be in the place of incarceration, again dependent on the youth's age.

Juvenile justice has traditionally been a local and state concern but was raised to the national level when the Office of Juvenile Justice and Delinquency Prevention (OJJDP) was established through the Juvenile Justice and Delinquency Prevention Act (JJDP) of 1974. There are four basic core requirements that a state must comply with, and in doing so, the state may qualify for participation in a formal grants program to access federal funds. The four core requirements are:

- (1) the deinstitutionalization of status offenders;
- (2) the separation of juveniles and adults in jails and lockups;
- (3) the removal of juveniles from adult jails and lockups; and
- (4) identification, assessment, and planning to confront the problem of disproportionate minority confinement.

Montana has been in compliance with the JJDPa and has regularly qualified for federal grants. During 1996, JJDPa was up for Congressional reauthorization and numerous pieces of legislation were introduced to significantly change the federal law. No changes were made by the close of this year's session, and the JJDPa was reauthorized through an appropriation. This leaves the JJDPa up for reauthorization by the new Congress in 1997.

Society has gone more than full circle from the desire for increased institutionalization, retribution, and punishment to a desire for rehabilitation and treatment and back again. Rehabilitation has not reduced the amount of crime, and the escalation of violence by juveniles has alarmed society. The desire to control disruptive youth is universal, but the method of control is controversial. Institutions provide control, but at the far end of the continuum from family control. Critics of institutionalization of youth point to the effects of the abrogation of parental responsibility (whether by choice or by force), the risks of concentrating delinquent youth together, the possible negative effects of association by placing a first-time or status offender with older, more delinquent youths, the stigma of delinquency being placed on a youth with possible life-long effects, and the effect of institutionalizing youth, such as the lack of training youth with life skills necessary to be successful in family and social life.²

The pendulum has swung back and forth from the desire for retribution and punishment to the desire to treat and rehabilitate. Neither approach has been completely successful, and neither approach has been completely discredited. Some would argue that the resources have never been sufficient to allow for success. The base of the discussion is still philosophically how one defines childhood and youth and whether or not youth should be held to the same standards to which adults are held. The standards to which adults are held are also in question and subject to the same cycles and pendulum swings. These standards that apply to youth also have to include the same rights and due process as are provided for adults if the accountability is going to be the same.

Juvenile Justice Statistics

Recent statistics have alarmed many with concerns regarding the rise in juvenile crime. In 1995, the nation as a whole actually experienced a decrease in the crime rate, although juvenile crime rates, especially for violent crime, seem to be bucking the trend. According to statistics from the Montana Board of Crime Control Juvenile Probation Information System, the total number of crimes against persons has risen, but the numbers of homicides and rapes for 1995 are lower than 1994, although still slightly higher than 1993 (see Appendix). Juvenile statistics in Montana must be used with caution, especially as Montana is lightly populated and small shifts in numbers can represent large shifts in proportional data. For example, FBI uniform crime reports are reported as rates per 100,000 population and in small counties and states, the rates may appear inflated based on a small number of cases.

According to the FBI's Violent Crime Index for 1992, juveniles accounted for 12.8% of violent crimes cleared by arrest nationally, and they accounted for 14% for 1995. The juvenile responsibility for violent crime reached its lowest level in 25 years in 1987, when, based on clearance data, only 8.5% of violent crimes were committed by juveniles. Since then, the levels have risen back to the levels experienced in the mid-1970s. Juveniles were responsible for 9% of all murders in 1992, the highest level in a generation.

Nationally, juveniles were charged with committing 14.1% of all forcible rapes known to police in 1992. This compares to a low of 9.4% in 1975 and a high in 1968 of 14.8%. Juveniles were charged with committing 15.9% of robberies in 1992, down from a high of 23% in 1969, but up from the 10% level in 1989. Aggravated assault charges were at 12%, which is higher than the stable rates from 1965 through 1991, ranging from 9% to 11%.³

Juveniles are not only perpetrators of crime, but in greater numbers are victims of juvenile and adult crime. According to the National Crime Victimization Survey, juveniles experience a victimization rate that is twice that of adults 18 to 25 years of age and six times that of adults 35 years of age or older. Violent victimizations against juveniles accounted for 23% of the 6.62 million victimizations in 1992, as well as one-fourth of the assaults and one-fifth of the robberies. Of all violent victimizations, 27.1% were aggravated assaults.⁴

The overall crime rate for 1995 was 2% lower than in 1994, the lowest since 1985, 11% lower than 1991, and 4% lower than 1986. The national crime index rate was 5,278 per 100,000 population, the crime index for cities outside of Metropolitan Statistical Areas (all cities in Montana except for Billings) is 5,315, and the crime index for the West was 6,083.⁵ Montana's crime index rate for 1995 was 5,484 major crimes per 100,000, a 16% increase over the past year. This increase may be attributed partially to a 17% increase in the rate of occurrence of larcenies and partially to fewer agencies reporting. In a state with a smaller population, small changes in numbers of offenses may be magnified when calculated based on a larger population base.⁶ Montana's crime rate is lower than the crime index for the West, higher than the national average, and slightly higher than that of rural America.

No one variable can give the entire story, and although probability of types of offenders or offenses can be measured, there is no predictability in knowing which youth may become adult offenders and which youth may grow through their rebellion to achieve adulthood without criminal behavior. Many conditions beyond a youth's control may contribute to the youth's behavior and society's behavior toward the youth. These conditions include poverty, family structure, abuse and neglect, and race. The OJJDP, in response to assisting the many parts of the juvenile justice system with useful and accurate information, published Juvenile Offenders and Victims: A National Report.⁷ The following information is excerpted from that report.

The juvenile population (below age 18) comprises more than 1 in 4 persons in the U.S. and is projected to continue to increase (by 15%) between 1990 and 2010. Montana's juvenile population increased 2% from 1980 to 1990, twice the U.S. average of 1% growth. The rate of growth in other surrounding states varies: Idaho 3%, Wyoming -6%, North Dakota 1%, South Dakota 9%.

Montana's juvenile population is 90% white, and nationally Montana has the fifth largest proportion of Native Americans in the juvenile population at 9%.

Montana's proportion of juveniles under age 18 living in poverty in 1989 was 20%, with a significant difference in the white proportion (17%) and the Native American proportion (53%). The U.S. overall total of juveniles living in poverty is 18%, with the proportion of white juveniles in poverty at 12% and Native American juveniles at 39% on average. In Montana, 36 of 56 counties have over 20% of all children living in poverty.

In 1990, Montana's proportion of children living in single-parent families, 19%, was below the U.S. average of 24%. Though more children are living in single-parent families, three out of four live in two-parent families. More children in single-parent families with only a mother present live in poverty, 46%, than those in single-parent families with only a father present, 24%, or in a two-parent home, 9%.

Though Montana's percentage of youth, 8%, who were ages 16 to 19 in 1990 and who withdrew from high school without graduating is below the U.S. percent of 11%, the percent of Native Americans, 22%, is higher than the national percent of Native Americans of 18%. (Montana law requires compulsory attendance through 16 years of age.)

Black males 14 to 17 years of age are more likely than other juveniles to be homicide victims. Homicide victims under age 10 are more likely to be killed by parents (59%); and victims 10 to 17 years of age were more often killed by a friend or acquaintance (61%) than a family member (16%).

Compared with youth who were not abused or neglected, a greater proportion of youth who were substantiated victims of maltreatment before age 12 reported committing violent acts (70% vs. 56%). A National Institute of Justice study found that 26% of abused or neglected children eventually had a juvenile arrest record, compared with 17% of children who were not abused or neglected.

For every two youth 0 to 19 years of age who were murdered in 1991, one youth committed suicide. Suicide increased 76% for youth 10 to 14 years old between 1979 and 1991. Young suicide victims, ages 15 to 19 years, are disproportionately male and white.

Victims report that approximately 28% of personal crimes (rape, personal robbery, aggravated and simple assault, and theft from a person) against persons 12 years of age or older were committed by juveniles. Male offenders committed 88% of these crimes, and females committed 10% of these crimes, with the remainder committed by both. Information on the sex and race of the juvenile offender is essentially the same as for adult offenders.

According to victims' surveys, 1 in 5 violent crimes were committed by juveniles and 1 in 7 serious violent crimes were committed by juveniles in

groups. When reported as violent crimes cleared by arrest of a juvenile, the number decreased to 1 in 10.

Most juveniles have committed at least one delinquent act, fewer have an official record, and very few are responsible for the majority of offenses. A Philadelphia study in 1976 found that 42% of those who had had contact with the police had only one contact by their 18th birthday. A study of Utah and Arizona juvenile court records found that 59% of all youth referred to court intake once did not return to court again. In both studies, males are more likely to recidivate or have more than one referral. Minorities are also more likely to have multiple official contacts.

As a youth ages, the youth is more likely to add new, more serious behaviors. The earlier onset of a delinquent career, the greater number of offenses a juvenile is likely to commit, though the average seriousness of offenses in a career is not related to the age at onset.

The probability of adult arrests for violent acts increases with the number of serious violent offenses committed before age 11. Half of the males with police contacts as juveniles had no adult arrests by age 30; nearly 4 in 10 males arrested as adults had no juvenile record.

Montana Youth Court Act^{*8}

The Montana Youth Court Act (Act) contains the current statutory provisions that provide the parameters of treatment of youth who violate the law. The Act celebrated its 20th birthday in 1994. In its 20-year history, the Act has been amended approximately five dozen times, including a handful of amendments in the 1993 session. Several amendments were made in the 1995 session. The Montana Supreme Court has considered upward of 30 cases involving the Act, and its provisions have been the subject of close to a dozen Attorney General's Opinions.

* The following section is excerpted from an overview of the Montana Youth Court Act initially prepared by Elizabeth Baker, Assistant Attorney General. Commission staff updated the overview and published a document including the Youth Court Act with the 1995 statutory changes.

On one hand, the continuing evolution of the Act is valuable in making sure we are keeping up with modern standards in addressing youth issues. On the other hand, it may be a signal that we need to step back and evaluate whether the Act is meeting the needs of Montana's youth and those who serve the juvenile justice system.

When the Act was adopted, its philosophy--which was described as "noble and humane"--was to offer Montana's youth a program of supervision, care, and rehabilitation. Consistent with the youth court movement, the Act recognizes the importance of preserving the unity and welfare of the family whenever possible and sought (as originally drafted) to remove the element of retribution. Amendments in 1995 deleted from the stated purpose of the Act the following language "to remove from youth committing violations of the law the element of retribution", though no provision inserted "retribution" as a purpose of the Act. Prior to 1995, the Supreme Court of Montana emphasized the remedial goals of the Act, stating that commitment of a youth is strictly for rehabilitation, not retribution, and that the purpose of the Act is to provide a mechanism through which the state can act in the place of the parent when necessary.

The Act represented a monumental effort to make real changes in the juvenile justice system and has served a valuable function. Now, however, with juvenile crime at the forefront of America's concerns, fears are being raised that our youth--and our society--are being failed by the juvenile justice system.

The Montana Constitution, Article II, section 15, grants the same fundamental rights to persons under 18 years of age that are granted to adults, unless specifically precluded by laws that enhance the protection of youth.

The legislative purpose of the Act, as enumerated in 41-5-102, MCA, is to preserve the unity and welfare of the family whenever possible; to provide for care, protection, and wholesome mental and physical development of youth coming within the provisions of the Act; to prevent and reduce youth delinquency through immediate, consistent, enforceable, and avoidable consequences of youth's actions; and to establish a program of supervision, care, rehabilitation, detention, competency development, community protection, and restitution; to achieve these goals in a family environment whenever possible; and to provide judicial procedures in which the parties are assured a fair, accurate hearing and recognition and enforcement of their constitutional and statutory rights.

Juvenile Justice in Montana

As the nation goes, so goes Montana. Montana has followed the same basic history in the development of juvenile justice as other states. Historically, the two institutions for juveniles have been the Pine Hills School for boys and Mountain View School for girls. Pine Hills School was founded in 1893 as the Montana State Industrial School, at the site of the former Women's Territorial Prison, to serve "the incorrigible, the vagrant and vicious" male and female youth.⁹ The institution was also used to house orphaned children.

The institution most recently known as Mountain View School for girls was founded in 1921. Both schools were situated in rural areas, a common practice intended to take youth away from their home environments in order to give them an opportunity for reformation of their behavior using training in agricultural pursuits.

Montana has participated in the deinstitutionalization trend, though never as totally as did states such as Massachusetts. Most recently, Pine Hills School was scaled down in size in response to legal challenges based on civil rights issues. Mountain View School was recently closed and replaced by a private-public program that includes a wilderness phase intended to modify behavior and to teach youth basic skills for living. Montana has participated in the deinstitutionalization program of taking youth and keeping youth out of adult jails and has developed a juvenile detention system that is operated by the counties and funded partially with state and federal funds.

The Commission heard proposals to allow youth to be placed back into adult jails as punishment and to develop additional secure correctional facility beds for males at Pine Hills School. Since the closure of Mountain View School, there has been no in-state secure correctional facility for girls. However, there is a new Department of Corrections proposal for a 16-bed secure facility for girls to be located in Boulder and administered in conjunction with the Montana Youth Alternatives Program.

Though House Bill No. 240 mandates the Commission to study the juvenile justice system, juvenile justice in Montana is not really a system at all. A "system", as defined by Webster, is a "a set or arrangement of things so related or connected as to form a unity or organic whole". Juvenile justice in

Montana is composed of interrelated, but independent entities. There is no formal, centralized administrative oversight of the entities that is integrated in order to provide unity. An inventory of juvenile justice and mental health resources is included later in this report, complete with a statewide map and an organizational chart of governmental entities.

The various entities encompass the levels of local, state, and federal government and all three branches of government. The Legislative Branch is responsible for appropriating funds through various Executive Branch state agencies for programs directly and indirectly related to juvenile justice. The Judicial Branch is represented by a Youth Court in each of 21 judicial districts, each of which is county-funded. Each district has one or more judges who serve as Youth Court Judge. Each district has a chief juvenile probation officer and other juvenile probation staff.

Two Executive Branch agencies, the Department of Corrections and the Department of Public Health and Human Services, administer facilities and services to juveniles involved with the justice system. A third Executive Branch agency, the Crime Control Division, administered by the Board of Crime Control, is attached to the Department of Justice and serves as the administering agency for state funds for detention and other programs, the granting agency for federal funds, and the administrator of juvenile probation officer training. A fourth Executive Branch agency, the Office of Public Instruction, is responsible for administering special education funds for youth who qualify for special education services.

The Department of Corrections assumed the duties of the former Juvenile Corrections Division of the Department of Family Services. The Department of Corrections administers the single state youth correctional facility for boys, Pine Hills School, and the new, coeducational Montana Youth Alternatives (MYA) Program. The MYA Program was authorized partially as a replacement for the former Mountain View School, a correctional facility for girls, that was closed in 1996. The Department of Corrections is responsible for providing for appropriate placements for youth committed to the Department during adjudication. Placements can include shelter care, foster care, treatment facilities, or secure correctional facilities. The Department of Corrections is also responsible for juvenile parole or aftercare, including juvenile parole officers and two transition centers for males. Transition centers provide a residential facility

to assist youth in the transition from the secure correctional facility back into the community.

The Department of Public Health and Human Services is responsible for mental health and child welfare programs, including the licensure of foster care and out-of-home care for youth. The Department is also the state Medicaid agency; many youth in out-of-home care qualify for Medicaid assistance.

The Crime Control Division administers the Youth Justice Advisory Council, juvenile detention funding, and federal grants for juvenile programs.

Funding for juvenile justice programs is provided through local governments, both city and county, through state general fund money, and through federal grants. There are federal laws that must be complied with that, in turn, provide access to limited federal funding. The Appendix contains an inventory of specific information on juvenile justice and mental health resources.

Summary of Legislative Audit Findings and Current Status

The Legislative Audit Division (LAD) published a Performance Audit Report on Juvenile Justice in Montana in June 1993. The audit was performed over a period of a year by three to five staff persons. The LAD examined the judicial district Youth Courts, the Department of Family Services Juvenile Corrections Division, including Mountain View School and Pine Hills School, juvenile transition centers, juvenile parole, and the role of the Montana Board of Crime Control.

The report was critical of all elements of the system. The LAD found that there were substantial differences across the state regarding probation officer training, the collection of management information used to determine program activity and effectiveness, and Youth Court examination of parental contribution toward youth placement or treatment.

With regard to the Juvenile Corrections Division, the LAD identified areas of needed improvement involving management controls, the Interstate Compact of Juveniles, court-ordered restitution, training, youth transportation, and youth placement committees. Juvenile correctional facility issues included weaknesses in management controls, treatment-related activities, education programs, and security. Juvenile parole issues were identified as management controls,

detention, and parole violations. The Juvenile Probation Information System (JPIS) was identified as needing increased reliability and reporting requirements. The overall system was found lacking in management controls and management information.

Following the 1993 audit, the Governor had expanded the role of the Youth Justice Advisory Council to advise agencies in juvenile justice policy matters and to address issues of communication and coordination. In a June 1995 report on the Performance Audit Followup, many of the recommended improvements had not yet been made and the management of juvenile justice was still fragmented and lacking in-depth planning, coordination, and oversight throughout its components.

The Youth Justice Advisory Council has taken the responsibility to oversee progress being made in response to the audit. A training curriculum for juvenile probation and parole officers was developed and the majority of officers had received the training. There are plans to incorporate the JPIS into the Child and Protective Services (CAPS) system, and each juvenile probation office will receive the computer hardware to access CAPS.* This will enable greater communication between the juvenile probation offices and the child welfare system to assist in the communication that the audit found lacking. There have been some problems in the implementation of the new CAPS system, and the JPIS integration has been delayed.

The responsibilities of the Juvenile Corrections Division were assumed by the Department of Corrections in executive reorganization. The Department has adopted a mission statement, developed management controls, evaluated transportation data and needs, assigned the duties of the Interstate Compact on Juveniles to the Interstate Compact office, and adopted many policies and procedures. The Department has developed several proposals for consideration by the 1997 Legislature to further the administration of the juvenile corrections system.

By the nature of the way in which juvenile justice has developed over the past 50 years, there is no single administrative entity. The most basic level is in the community with the Youth Court. Each judicial district is operated slightly

* See "State Automated Systems that Include Information On Youth," by Susan Byorth Fox, Legislative Services Division.

differently, which is the essence of local control. The existence of a consistent training curriculum will be of help in developing greater consistency, but as District Court Judges and communities differ, so will juvenile probation officer practices. The Youth Justice Advisory Council can help to a certain extent, coordinating efforts by using standard requirements for funding and evaluation purposes.

Mental health system¹⁰

The mental health system that the Commission reviewed was in flux because of the executive reorganization and the move toward a comprehensive managed care program. Mental health services for children and adolescents were being administered through the Managing Resources Montana (MRM) Program. The MRM Program was implemented July 1, 1993, as a form of managed care for mental health services for severely emotionally disturbed children and adolescents. The MRM Program was a collaborative effort between state agencies and community mental health providers and was administered through the five mental health region programs. The MRM Program will be subsumed under the new mental health managed care Mental Health Access Plan.

The public mental health program in Montana, prior to reorganization, was administered and funded through three state agencies, the Department of Social and Rehabilitation Services, the Department of Corrections and Human Services, and the Department of Family Services. Reorganization consolidated these functions under the Department of Public Health and Human Services.

The federal Medicaid program provides services to those with sufficiently low incomes and those who meet eligibility requirements. Services include inpatient and outpatient hospital care, residential treatment center services for children and adolescents, community health center services, therapeutic foster care, and therapeutic youth group home care.

For those who are low-income but do not qualify for Medicaid, there are state general revenue funds and federal block grant funds for services through the state's five regional community mental health centers. Services for children and adolescents with serious emotional disturbances include outpatient individual and group therapies, residential psychiatric care, day treatment home-based

services, respite care, psychiatric consultation, assessment, sex offender evaluation and treatment, and individual and group case management.

Children who are the responsibility of the state because of neglect, abuse, or abandonment or because of actions taken by the court system require a separate category of services. Many of these services are provided through Medicaid or through the use of other federal matching funds through Title IV-A and IV-E of the Social Security Act. These funding streams may have changed significantly or may have been eliminated altogether in the recent welfare reforms adopted by Congress.

Many court-ordered placements necessitate both mental health services needs and housing needs that can be fulfilled in a residential setting. Funding for services for youth under court order is provided through many agencies including the Department of Corrections, multiple divisions within the Department of Public Health and Human Services, and the Office of Public Instruction (OPI). Mental health-related services provided in this context include therapeutic group care and therapeutic foster care.

The OPI is responsible for the education component of mental health treatment or special education services. The OPI oversees state compliance with the federal Individuals with Disabilities Education Act and ensures that special education students have an appropriate Individualized Education Program that is implemented with the public schools. When a youth is placed in a residential setting, in state or out of state, the OPI is responsible for funding the education costs, typically 1/3 of the cost of placement. The OPI has no control over the numbers of youth placed or where they are placed and as a result has experienced a great increase in education costs for placements, which in turn negatively impacts funding available for other students.

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1. Caven, Ruth Shonle and Theodore N. Ferdinand. Juvenile Delinquency. Philadelphia: J.B. Lippincott Co., 1975.

2. Krisberg, Barry and James F. Austin. Reinventing Juvenile Justice. Sage Publications: Newbury Park. 1993.

3. U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, Fact Sheet #15, 1994.

4. U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, Fact Sheet #17, 1994.

5. U.S. Department of Justice, Federal Bureau of Investigations, Press Release, 10/13/95.
6. Montana Board of Crime Control, Crime In Montana: 1995 Annual Report, August, 1996.
7. U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention (OJJDP), Juvenile Offenders and Victims: A National Report, 1995.
8. Montana Legislative Council, Montana Youth Court Act 1995 Overview, July 1995.
9. State of Montana, Department of Corrections, Pine Hills Juvenile Correctional Facility, Miles City, Montana, (No date, received as exhibit July 11, 1996).
10. Portions of this section were summarized from the Managed Mental Health Care Request for Proposals, let by the Montana Department of Administration, dated October 8, 1996.

CHAPTER 4

FINDINGS

These findings were compiled throughout the interim based upon public hearings in Miles City, Kalispell, Billings, Helena, Great Falls, and Missoula. The Commission amended and revised them at each meeting. Chapter 6 is a discussion of the relationship of these findings with the recommendations contained in Chapter 5.

Youth Mental Health and Justice Services

General Observations

1. (a) There are multiple categories of youth for which there are insufficient services, programs, and detention, including:
 - (i) (severe) conduct disorder;
 - (ii) organic brain syndrome (OBS);
 - (iii) seriously emotionally disturbed (SED);
 - (iv) sex offenders;
 - (v) chemical dependency;
 - (vi) violent offenders;
 - (vii) status offenders;
 - (viii) criminal nonviolent offenders;
 - (ix) female offenders in need of a secure correctional facility.
- (b) Deficiencies include:
 - (i) limited or nonexistent community and regional detention and shelter care;
 - (ii) limited or nonexistent local day treatment;
 - (iii) no state-operated, long-term, secure residential mental health facilities (SED's, OBS, sex offenders);
 - (iv) no facilities for youth under 18 years of age charged in adult court. Neither Pine Hills School nor state prisons (Montana State Prison or Women's Correctional System) are appropriate (or legal for youth under age 16);
 - (v) no secure correctional facility for delinquent female youth in Montana, resulting in some youth being released inappropriately back into communities;
 - (vi) lack of meaningful and useful data;

(vii) general resistance to sharing of information by parties involved with youth, i.e., on dangerous and violent youth who re-enter or transfer to school systems;

(viii) lack of appropriate education and treatment programming in existing detention facilities.

2. There is great concern by legislators, practitioners, and families regarding the number of youth being sent out of state. It is consuming greater portions of various state agencies' funding and is difficult on youth and families. The conclusion is that there is a great need for a more cost-effective continuum of services in Montana.

3. Rigid categorization of children creates barriers between the education, justice, and mental health systems and also negatively affects the way in which treatment is able to be funded. Funding problems lead to over-definition of youth problems and then are used to refuse services instead of integrate services and provide accountability for actions. Clear definitions of the status of children are needed in the Youth Court Act, and one label or definition (e.g., mental illness) cannot be used to relieve accountability for other issues (e.g., criminal behavior).

4. Each time that elements in the juvenile system have been discontinued or closed, there have not been sufficient programs developed to replace them (i.e., Twin Bridges, Swan River Forest Camp, Mountain View School, reduction of beds at Pine Hills School).

5. Each Indian reservation has different resources available to it. Most have few resources internally and have further complications because of multiple levels of jurisdiction (BIA, IHS, tribal, state, county) for different youth. Tribes need assistance with resources for all levels of youth programs that are culturally appropriate.

6. Adolescent day treatment services, cooperation between state agencies such as that provided by Managing Resources Montana (MRM), and local law enforcement that can distinguish between a child with mental health problems and severe delinquency problems are meaningful and necessary for children and their families.

7. Testimony received in many areas supports more resources for treatment, early intervention, and prevention programs.

8. There is an increase in juvenile crime.*

(a) Violent juvenile crime in Montana has steadily increased between 1990 and 1995. There has been a steady increase in handgun violence by youth.¹

(b) In 1995, there was a general overall caseload increase of 15% over 1994 for Montana's probation officers.²

(c) From 1994 to 1995, the overall increase of violent juvenile crime of 10%* in Montana was contrasted with a decrease of 22.8% nationally.³

(d) Five-year statistics show a rise in violent crime of 150%, in property crime of 60%, and in drug-related offenses of 400%. (NOTE: This finding was adopted by the Commission but these statistics could not be verified by staff).**

(e) Drug use nationally and in Montana has increased over the last five years. Nationally, the statistics are documented in the Department of Public Health and Human Services' Household Survey and in the Drug Abuse Warning Network; overall use of all drugs among the 12 to 17 age group rose 78% between 1992 and 1995. These statistics were found alarming by the Community Anti-Drug Coalitions of America who request comprehensive communitywide approaches to the problem.⁴

(f) These statistics are also borne out by data collected by the Department of Corrections and the Missoula County Probation Office.

Collaboration

1. Youth who are involved in the justice system often come from families in crisis. The state has some programs for families in various levels of crisis (mostly abuse and neglect) through the Department of Public Health and Human Services, though there are few programs for prevention and early intervention. The two systems must be able to coordinate services, share information, and have sufficient resources at hand in order to assist these families and youth as

* See also - Juvenile Justice Statistics, pg. 15.

** NOTE: See Appendix 4, Juvenile Justice and Mental Health Inventory for Juvenile Probation Information System (JPIS) statistics, pp. 80-82. JPIS statistics are not directly comparable from year to year.

problems arise and to prevent future problems with both the social work and justice systems. Some of the problems that need addressing are status offenses (drinking, runaways, truancy) as early warning signs before the family is in deeper crisis or the youth becomes delinquent.

2. There is confusion in the general public as to where the systems that deal with children's and youth's issues begin and end. The Commission received testimony at several meetings regarding the former Department of Family Services and its handling of child protective services and relinquishment of parental rights. Many of these families are intertwined in child protective services, mental health programs, and the juvenile justice system. Numerous caseworkers and separate state government and court agencies make it difficult for the public to sort through and understand the systems. The result is that there is dissatisfaction and blame between systems, parents, and caseworkers. Testimony regarding an individual child's or youth's point of view was not received, and there is no assurance that the needs of youth are being met.

3. There is hope that the Families Achieving Independence in Montana (FAIM) Program incorporates parental responsibility for participation in the youth's treatment and justice issues into the family contracts proposed.

4. The former Department of Family Services, now the Division of Child and Family Services within the Department of Public Health and Human Services, has a negative image among many parents and school districts. School districts are most concerned with a lack of information sharing. Parents and others are most concerned about the perception that parents cannot discipline their own child, that children are being informed of their "rights", and that parents have no rights. Clarity and consistent messages are needed from Child and Family Protection Services of the Division of Child and Family Services on legal forms regarding child discipline and what a parent's rights and responsibilities are under the law. Schools need to be informed of the law and subsequent changes.

5. Collaboration among social services, private providers, Youth Courts, mental health providers, schools, law enforcement, and additional resources are needed as part of the solution.

6. Collaboration occurs between state, county, and tribal authorities in the western detention region and in the eastern region. There are opportunities for

more collaboration, particularly between the Fort Peck Tribal Youth Detention Facility and Pine Hills School.

Detention, Shelter Care, and Placement Options

1. Detention facilities house preadjudicated youth, parole and probation violators, and youth who have been transferred to adult court but whose cases are pending trial, disposition, or appeal. Without sufficient detention facilities and resources available, certain cases may not be pursued (e.g., status offenders), which leads to victim and community dissatisfaction, lack of accountability for offenders, and less community protection. The juvenile justice system must be able to react expeditiously to protect the community, make offenders accountable, and provide the youth with the opportunity to change and become able to live productively within the community.

2. Counties operate long-term, secure detention facilities in only three of five detention regions (western, northcentral, southcentral). The eastern and southwestern regions have no county long-term, secure detention facilities and must rely on Fort Peck tribal detention, other regions, or no facilities.

(a) The Fort Peck Tribal Youth Detention Facility has approximately 20 beds. It houses both preadjudicated and postadjudicated tribal juvenile violators and is typically filled to capacity. However, there are more opportunities to collaborate between state and tribal authorities for the detention and long-term placement of postadjudicated youth.

(b) The three long-term detention facilities have a total of 28 bed spaces. These beds are also used by the state to house parole violators and to detain out-of-state youth who are caught in Montana and awaiting return to their home state.

3. Lack of detention and other resources adversely impacts the ability of probation officers and parole/aftercare officers to do their jobs effectively and renders the system ineffective due to lack of sanctions, accountability, and responsibility.

4. The greatest need in developing a continuum of care is in midlevel and intermediate resources, such as therapeutic foster care and therapeutic group homes. The state must place greater resources in the lower and middle levels of services to avoid doing triage from the most serious cases down and to assist in prevention and early intervention.

5. Policy decisions resulting in administrative regulations and statutes that do not allow for the application of common sense have created difficulty in allowing creative solutions to shelter care shortages. For example, the policy decision to not fund an empty bed at a private facility (Home on the Range) in order to make the bed available for a shelter care bed has restricted the private facility from expanding resources and has resulted in the shelter care bed not being available in eastern Montana.

6. Missoula Youth Homes, a level of care in between shelter care and detention, received high praise from teachers and former students. Their program seeks to hold a youth accountable for the youth's actions, while addressing treatment and educational needs.

7. A place for a "timeout" for parents and youth, especially status offenders, has been recommended by numerous persons. The security level would need to be between current shelter care and detention care and accessible to parents and others on an as-needed basis.

8. Conduct-disordered youth who end up in hospital emergency rooms are a problem. Great Falls is creating a crisis center within its juvenile detention center.

9. Juvenile detention costs are partially reimbursed through a grant program administered by the Board of Crime Control. Transportation costs are a significant issue and should remain a reimbursable cost by the Board.

10. Some private providers are currently underfunded. There is a need to evaluate and reassess the current rate matrix utilized by the Department of Public Health and Human services and to establish a formula to calculate cost-of-living increases. Guidelines and policies from other similar states should be researched in this regard.

Youth Probation and Parole Resources

1. There are 10 juvenile parole officers serving the entire state. Caseloads vary by region. The Commission heard a proposal to combine juvenile parole with adult parole or with juvenile probation. Another proposal was offered to give juvenile parole responsibilities to juvenile probation and to make juvenile parole officers the placement and resource experts. The juvenile parole officers

are now administered through the Department of Corrections, which also administers adult probation and parole. Juvenile probation officers are administered by the 21 judicial district Youth Courts, which leads to a concern regarding standards and uniformity.

2. Juvenile probation and parole caseloads have sharply increased recently.
3. Juvenile probation officers from each judicial district have voiced dissatisfaction and frustration with lack of resources, their inability to hold youth accountable, the increasing volume of their caseloads, information and data problems, court issues, and increasing youth violence. Testimony was received statewide that there are insufficient resources in staffing and programs in Youth Court.
4. There is not sufficient manpower for juvenile probation officers in all districts in the state. Testimony was received that one area that suffers is followup or followthrough.
5. The question of whether juvenile probation should be administered by County Commissioners was raised as a method to improve uniform communication, to deal with probation as a unit, and to ensure ethical behavior. The important issue is standardization not administration. Other methods to ensure standardization should be discussed, and less-populated counties that share probation officers with larger counties must be kept in mind.
6. Concerns regarding standards and uniformity among youth probation and Youth Courts were expressed, though not clearly articulated. Training is an area that is being addressed at a statewide level. District Courts in Montana have a disparate funding system that includes funding for the juvenile justice system. Each judicial district confronts circumstances of population, resources, and community character when dealing with juvenile problems, some to a greater extent than others. It is the responsibility of the juvenile probation office, the District Court, and the County Commissioners to deal with the problems in the way that a particular community dictates.

Mental Health

1. The mental health managed care Request For Proposals (RFP) will affect mental health services for youth. Testimony was received that the RFP does

not include an effective appellate review if the managed care organization (MCO) determines that treatment is not necessary, that there is no "stay-put" provision to allow treatment to continue at state expense during appeal, and that the contract should also include an evidentiary interpretation that gives the patient's treatment clinician's opinion precedence over the outside examiner's. In the final version (August 13, 1996) of the RFP, conduct disorder is included as well as discharge planning for youth with mental health needs who are discharged from correctional facilities.

2. The utilization review program for MRM is currently decertifying youth for Medicaid payment for treatment with little notice. The result is that finding an alternative placement for treatment is very difficult.

3. Testimony was received in many areas of the state that MRM was a positive experience and, in many cases, the first time that the family received the real help that it needed from a caseworker.

4. The proposed mental health managed care contract that has received the necessary federal waiver calls for a full-risk, multiyear contract between the MCO and the service provider. It is in the MCO's best interest to provide clinically appropriate care because it will suffer the financial consequences if it does not. The contract with the MCO should resolve the decertification problems that had occurred within the MRM Program because the MCO will be responsible for providing a continuum of care.*

Status Offenders

1. There is a difference of opinion as to where status offenders (e.g., minors in possession (MIP), truants, ungovernable youth, and runaways) belong, but the common theme is that no agency has the resources to deal with them. The juvenile probation officers propose to take them out of the Youth Court Act. The Department of Corrections proposes that schools and communities

* On November 14, 1996, the Department of Public Health and Human Services awarded the contract for the managed care of public mental health programs to Montana Community Partners, a non-profit joint venture between CMG Health Inc., a for-profit corporation based in Owings Mills, Maryland, and the Care Coalition of Montana, a non-profit Montana Corporation.

deal with truancy, that the Department of Public Health and Human Services deal with ungovernable youth, and that City and Justice Courts deal with MIPs. Status offenders are time-intensive, and the youth have legitimate reasons to be involved in all of the systems.

2. Status offenders need immediate consequences and intervention, and families and communities must participate. Testimony was received that some people wanted status offenses treated as crimes (currently, being a runaway is not a "crime"). The removal of driving privileges and assessing of fines were suggested sanctions. The Commission was informed by the Department of Justice about the various levels of driving sanctions and the ramifications of each. Revocation or suspension of driving privileges can result in a loss of insurance coverage by a family or exorbitant raises in premium rates. There were also concerns raised that only older teens have driving privileges and that many families rely on teens for driving for family purposes. A parent can withdraw or cancel their financial responsibility for a youth's driver's license, which can result in an administrative revocation without insurance ramification. Justice Courts currently have the authority to "confiscate" a youth's driver's license in an MIP case.

3. There are concerns about how to deal with status offenders versus how to deal with youth that may be further involved in the justice system (delinquents). There is concern as to the court (Youth Court, Justice Court, or Municipal Court) in which status offenders belong and under which category the youth belong (youth in need of supervision or youth in need of care).

Family and Community Involvement

1. Family involvement, support, and responsibility need to be built into the entire continuum of juvenile programs from community-based programs and probation to correctional facilities and parole/aftercare. Testimony was received statewide that communities need to be able to deal with their children. Some communities appear ready, willing, and able and desire greater resources. Other communities do not seem to have the willingness or ability to deal with problem youth in the community.

2. Testimony was received that there is a need for more parental rights and for greater parental and local control. At the same time, there was testimony that parents needed more help and local options than currently exist. Many

parents are seeking that help from state and local agencies. Many parents cannot afford the treatment and counseling needed for youth, and they find that their child does not receive help for those problems until the child is well within the justice system. They are not looking for punishment, but boundaries, supervision, and assistance.

3. Certain communities have difficulty in obtaining employment for youth in the community due to the desire of the community to rid themselves of problem youth. This lack of employment restricts the youth's ability to pay restitution. Some communities have successful restitution programs but need more staff resources to expand programs to meet the needs. Specific programs are needed in order to make restitution work as a sanction.

4. There are expectations by some parents that the state can raise or fix a child when the parents can no longer control the child. There was testimony from justice and mental health providers that it is not their job to raise other people's children and that there are not resources to help all of the parents who need help.

5. Testimony was received that the victim must be provided the right to participate in intervention, sentencing, and disposition discussions for the youth. The victims need to be kept informed and to be involved in decisionmaking to the extent possible.

6. Communities are finding success with volunteer community sentencing panels or councils. Billings and Havre have programs, and Great Falls has recently instituted a juvenile sentencing panel.

7. There are youth with no parental support and there is no lever to make them attend school if they are truant. There are no resources for them unless or until they commit a crime.

8. Policies that hold the parent accountable for the youth's behavior appear to relieve the youth of accountability. Testimony was received that there are many parents who do what they are supposed to in terms of treatment, medication, etc., but a youth chooses not to cooperate. Many youth have problems beyond a parent's control.

9. Testimony was received that more attention must be focused on what parents and youth are doing right and that the justice system must be supportive and replicate those programs. The Montana Children's Trust Fund Child Abuse Prevention Program and Big Brothers and Big Sisters Mentoring Program were mentioned as programs that work.

10. The responsibility for determining and collecting parental contribution is confused and needs to be clearly assigned to an agency or a department. The recipient of the contribution should be responsible for the determination and calculation of the amount of parental contribution (i.e., the preadjudication costs lie with the District Court and the postadjudication costs lie with the state, so those entities should be responsible to calculate the amount of costs).

11. The Commission concluded that primary responsibility for discipline of a youth resides with the youth's parents who have the right to use appropriate and responsible means.

Youth Issues

1. The staff of the Attorney General's Task Force on Violence provided testimony that today's youth see violence as inevitable and as a legitimate tool for solving problems. The staff also testified that a reluctance to divulge information exists for fear of retribution from the person who is involved in the wrongdoing. This reluctance is a community issue and is a behavior shared by adults.

2. In the Commission's first session with teenagers in Missoula, the most common themes from the students' perspectives were: lack of guidance by parents and teachers; struggling with expectations; and lack of positive involvement by parents, teachers, and law enforcement in the form of awareness, communication, and support. Students need a "good going, you guys" for the majority who are not in trouble. The students wanted adults to talk to and wanted positive guidance and support; if they don't get it at home or school, they will find it from friends, be it good or bad, and from gangs or adults who may influence them negatively. Students did not like the "us and them type of thing". They wanted adults to treat them with respect and to talk with them about their dreams and aspirations.

Self-esteem is an issue, and the family is seen as the biggest source for self-esteem. Family relations and community must be built up to help build a youth's self-esteem. Also, schools were mentioned as a site for self-esteem workshops or at least places where personal attention and individual recognition by a teacher on a regular daily basis could happen.

The students basically said that they are unaware of any consequences for wrongdoing or that the ones they know of are too lenient and that they basically do not think of consequences. Some thought that fear is a great motivator, but others thought that even the fear of going to hell or of God didn't work now so they didn't know what would. The students basically formulated ideas similar to graduated sanctions that would work with lesser sentences for first-time and smaller offenses and maximum sentences for repeat offenders and serious offenses. Current penalties are not deterrents now. Restitution can be a good thing, but is sometimes inappropriate or inadequate. The students believed that community service was appropriate because students did not like to do it. The fines needed to be sufficiently large to make an impression, and parents should not be responsible for paying a child's fine. Restitution, such as paying hospital bills, was mentioned, and it was suggested that students should be required to go to counseling.

Court Issues

1. There are a variety of approaches among the 21 judicial districts as to how they deal with juvenile justice and child abuse and neglect cases.
2. There needs to be a mechanism between courts within districts, once the lower court's options have been exhausted. Courts should coordinate information on juveniles (e.g., MIPs may be in City or Justice Court with other proceedings in Youth Court). This information needs to be shared and coordinated.
3. There need to be greater bands or levels of penalties that provide graduated sanctions for all levels of offenders, but especially status offenders. Sanctions must be immediate and "have teeth".
4. There must be information sharing between Justice Courts and District Courts as the youth often have cases in both courts.

5. There is concern over the length of time it takes to process juvenile cases and concern that the delay dilutes the effectiveness of any disposition. Youth need immediacy of consequences.

6. Yellowstone County's Youth Conference Committees, Cascade County's Juvenile Sentencing Panels and a similar program in Havre, and Bozeman's Court of Peer Review are positive community-based responses to providing immediate consequences to first-time and second-time offenders and to relieving the courts' burdens of dealing with the less serious offenders.

7. Testimony was received that there is great interest in peer sentencing panels.

8. Individual judges and counties are implementing programs within a single judicial district to make processing of juveniles more expedient. Judge Johnson in Cascade County appoints a public defender for the youth if there is no attorney present at the initial hearing and schedules a status conference in two weeks. Missoula County uses a court screener for MIPs and has instituted a family-court model for all family proceedings to be handled under a single judge.

9. The MIP statutes were amended in the 1995 Legislative Session to reflect changes proposed by a Minors in Possession Task Force that worked in conjunction with a DUI Task Force. The Department of Justice would like to more clearly evaluate the effects of the changes from last session before changing the statutes again.

10. There are problems with the Legislature passing additional laws that are unenforceable. The tobacco laws passed in 1995 are brought up often as an example. Either they are not enforced at all, or they are used as a method by law enforcement to come down hard on kids, while other more serious offenses, such as drug offenses, seem to have no enforceable consequences. The youth pick up on these inconsistencies and mixed messages.

School Issues and Impacts

General Observations

1. School districts experience financial costs and disruption because of youth with various mental health and medical problems in the school system.

Information is not always available about the youth until they show up in a school district, and it causes great disruption and a need to realign limited resources. Confidentiality, trust, turf battles, and professional issues prevent the exchange of important data and result in unnecessary costs and strain on the schools. The children and staff need safe environments.

2. Emotionally disturbed and seriously emotionally disturbed youth are being inappropriately sent to Pine Hills School or returned to and allowed to enter the local school systems without prior notice because there is no state facility for them and there are no sufficient community-based treatment programs.

3. Public hearings indicate that increasing school violence is a statewide problem and is perceived to be linked to the lack of detention facilities and programs.

4. In school district policies, "weapons" should be better defined and there should be a differentiation between guns and firearms and other weapons.

5. There is potential within welfare reform to develop community service programs within the schools using the community service workers (i.e., crossing guards and playground attendants).

6. Schools need accountability by the parents, the students, and the justice system. The Legislature needs to provide resources for the justice system to provide assistance. Schools cannot be the sole place to provide assistance to delinquents.

Special Needs Youth: Funding and Resources

1. The limited special education funding affects all students by limiting resources for certain groups who then compete for funding within overall budgets. There has been a significant increase in out-of-state placements, which cuts funding for in-state schools.

2. Conduct-disordered youth and emotionally disturbed youth are not always the same, and conduct-disordered youth need programs in schools too.

3. Special education costs for special education students placed out of state by other state agencies are increasing, which in turn decreases the

funding available for in-state special education. (Education costs are approximately 1/3, for which the Office of Public Instruction is responsible; room and board costs are 1/3 and treatment costs are 1/3, for which the placing agency is responsible.)

4. Elementary schools, as well as middle and high schools, feel the impact of students with emotional disabilities. The numbers of students may not be great, but the resources spent on even one child can be significant.

5. Special education tuition funds that are received for out-of-district youth are not available within the program that receives the child, which causes problems for some school districts.

6. Funding is needed for public school programs for emotionally disturbed and delinquent youth. Day treatment is one example of a successful program in some districts. Alternative schools are another example of programs that are successful in assisting youth with difficulties. There is one program that has combined an alternative school and an adolescent treatment program, which could be used as a model of a successful program.

Information Sharing and Confidentiality

1. School districts are most concerned with a lack of information sharing from the Department of Public Health and Human Services and Youth Court, especially when a child has been discharged from a placement without completing treatment. Schools also need notice of any special needs for a youth for planning purposes prior to the placement of the youth in the community by Department of Public Health and Human Services or Youth Court.

2. Confidential information on a student's background is not readily available to schools, and the delay hinders schools from developing appropriate plans for the youth and in some cases presents problems or dangers to teachers and other students. State law requires only immunization records to be forwarded. Cumulative files often contain only immunization records and report cards. Information on special education and other kinds of testing needs to be made available to schools. These concerns result in recommendations to include schools in the Child and Adult Protective Services (CAPS) data base, which has numerous financial and confidentiality difficulties.

3. When school personnel participate on various teams involving youth, the appropriate person is not always present. Schools may send administrators or others who do not have personal knowledge of the youth and the youth's problems.

Alternative Educational Settings

1. Montana law provides that any child who brings a weapon to school is automatically expelled for a year; there is no place for them to go. If this child is a special education student, the student must continue to receive an education, but there are no sufficient alternative settings that are safe for the teacher and the child.

2. There is a need for safe alternative sites to deliver instruction to youth who, for one reason or another, cannot attend school in a traditional setting. Suggested daytime educational sites include teleconferencing programs, more alternative schools, or access to secure environments, such as juvenile detention centers, therapeutic group homes, group homes, therapeutic treatment centers, or probation offices.

Truancy

1. When "truancy" statutes fail to bring about changes in behavior, the Great Falls Police Department charges a parent with endangering the welfare of a child. Truancy laws contained in Title 20 of the Montana Code Annotated are ineffective.

2. The option of "home schooling" may be being abused by some parents or youth when the parent cannot control their child or make them attend school. Youth should be required to be at home during school hours if they are home-schooled.

3. There was testimony that mandatory school attendance should be raised to age 18 and that driving privileges should be based on school attendance. Representatives from the Department of Justice reminded the Commission that recordkeeping from the Department's perspective would be difficult and require additional full-time employees.

Pine Hills School and Montana Youth Alternatives Program

1. The capacity of Pine Hills School is 85 youth, and it is operating at full or over capacity. This overcrowding affects the state's detention facilities, and there are concerns regarding discharge policies. Testimony received indicated that there is a need for additional housing at Pine Hills. Pine Hills does have open adjacent land that is controlled by the Department of Natural Resources and Conservation (formerly Department of State Lands). Pine Hills has addressed many legal issues concerning quality of the facilities. More information is needed on quality, extent, and effectiveness of the programs at Pine Hills.

2. The issue of sex offenders placed at Pine Hills School was raised as well as the question of whether or not there needs to be a specific treatment program at Pine Hills for sex offenders. When decisions are made regarding the type of youth suitable for Pine Hills and for Medicaid funding, labeling of the youth, such as sex offender or conduct disorder, becomes the issue and has not been resolved.

3. Montana Youth Alternatives is a combination of state-operated and private-contracted services.

4. Emotionally disturbed and seriously emotionally disturbed youth are being inappropriately sent to Pine Hills School or returned to and allowed to enter the local school systems because there is no state facility for them and there are no sufficient community-based treatment programs. If appropriate treatment is found for them elsewhere, there is no assurance that funding will remain available for them and many are returned to Pine Hills on short notice. These youth are subsequently being released from Pine Hills School upon completion of their sentences or because of overcrowding, without necessarily having been treated for their conditions. If Pine Hills is to house these youth, a program for them should be developed and adequately funded.

5. Testimony and a concern over lack of programming at Pine Hills School was heard from a former student of Pine Hills who is currently a boot camp inmate. He found the programming at the boot camp, with a rigid behavioral code, rehabilitation, and courses that taught how to get along in society, to be a better opportunity to change his behavior. Another former Pine Hills student

and current boot camp inmate testified for the need for more therapy at Pine Hills and stiffer penalties for first offenses. Both men believed that boot camp provided better programs and role models. Their complaints about Pine Hills in the past included a lack of intense therapy for criminal thinking, anger, and empathy with victims; a lack of life skills, communication, morals and values training; a lack of role modeling; and a lack of control over juveniles and their convict code.

6. Testimony received in April and July of 1996 informed the Commission that Pine Hills School has established length-of-stay guidelines; a year-round educational program, including life skills and individualized instruction; a vocational-agricultural educational program; a restitution program involving training in victim empathy; and a weapons-check system. The current staff-to-student ratio is 4 to 20 or 3 to 20 depending on the level of security and time of day or day of the week. Pine Hills is now fenced around the perimeter. The Department of Corrections has a proposal to add 35 beds, including a 20-bed sex offender program unit.

7. There is concern regarding whether Pine Hills School is the appropriate facility for juvenile sex offender treatment, both for reasons of being able to attract treatment professionals and in keeping the youth close to family. There are suggestions that sex offender treatment be placed in other areas of the state, especially based on where sex offenders reside and from where they are being sentenced, such as the western region of the state. If a program was in the western region, it would allow for greater family participation in the treatment for those youth from the western region.

8. In fiscal year 1995, 37 girls were sent out of state to a secure facility. The Department of Corrections proposes to add a 16-bed facility in Montana. The Department of Corrections should consider privatization options, the number of beds that should be in state, and the placement of those beds to maximize family involvement.

Prevention and Early Intervention

1. The Department of Justice shared studies of the Drug Abuse Resistance Education (DARE) program that have shown that it can be effective. Future funding is an issue, along with whether funds should come from the state or a community.

2. Delinquency prevention is the most cost-effective approach, but if personnel are always dealing with crisis intervention, there is no time for prevention.

3. Delinquency prevention, early intervention, and juvenile violence must occur simultaneously and may be accomplished with different tools and goals.

4. Many people testified that parents needed help earlier on in order to be able to intervene or prevent problems, before the youth was fully involved in the youth justice system.

5. Testimony was received that the Joint Oversight Committee on Children and Families was concentrating on teenage pregnancy and teenage drug and alcohol abuse and focusing on child care and early intervention. The Children and Families Committee concluded that by bringing more dollars to the child-care process in the form of day-care slots and after-school programs, fewer dollars will need to be spent on courts, probation, and prison. The funding for prisons and more detention will be competing with funding for children. Also, savings from the mental health program (MRM) may be taken from the communities where dollars were saved to go back to state agencies and prisons. These savings must be kept in the communities for more prevention and early intervention.

6. The Youth Violence Task Force of the Attorney General's Office is concentrating on prevention strategies for youth violence in Montana. Its final report will be using the Missoula proposal Beyond Violence Towards a Healthy Community as a model for cooperation. This proposal was chosen by the Interagency Coordinating Council for Prevention as the pilot project for its first blended-funding project.

Information and Data Problems

1. There is no integrated system for the Youth Courts, state agencies, and school systems to coordinate and share information. Problems are that information is either not gathered and not accessible or that there are frequent changes in the types of information requested. The new CAPS system should be a start toward a solution, although the juvenile probation officers' part of the system needs to be funded in order to be fully operational on the system and the schools need to have a way to access information. Schools especially need

to be informed of the type of youth being placed in the community (i.e., special education, behavioral problems, or mental illness) if the placement is by a state agency in a group home, residential care, etc. There are statutory and administrative provisions that allow some information sharing, but they may need to be made clearer and additions may be necessary.

2. Representatives from the Department of Public Health and Human Services, the Board of Crime Control's Youth Justice Advisory Council, and the State Court Administrator's Office have failed to coordinate data collection and systems. There appears to be misunderstanding and a lack of communication about the direction each system is taking and the need for interaction.

3. The statutory "need to know" confidentiality provision must be defined to include schools.

4. The Montana Sex Offender Treatment Association sex offender data base is a three-year data collection effort, funded by a Board of Crime Control grant to track sex offenders from 12 to 17 years of age. The Association will also develop a risk assessment tool and evaluate therapists' referrals for sex offender treatment.

5. Tracking of funding for sex offender treatment must be done.

6. There needs to be a consistent reporting mechanism among the agencies, such as the Office of Public Instruction, the Department of Public Health and Human Services, and the Department of Corrections, to appropriately track and develop benchmarks associated with juveniles in the juvenile justice and mental health systems.

Available Resources, Funding, and Facilities *

General Observations

1. There is no centralized data on many juvenile and mental health issues.

* See the Appendix for an Inventory of juvenile justice and mental health resources in the state.

2. Facilities with potential for use as juvenile facilities include:
 - (a) Swan River Boot Camp (will be vacated in 1997);
 - (b) Pine Hills School farm; and
 - (c) Boulder (site of Montana Youth Alternatives program).
3. Alternative sites suggested for detention cells include:
 - (a) Miles City (hospital);
 - (b) Great Falls (hotel);
 - (c) private buildings; and
 - (d) former Mountain View School.

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1. "Youth crime rate rises," Missoulian. August, 1996.
2. Ibid.
3. Ibid.
4. Press Release by the Community Anti-Drug Coalitions of America, Tuesday, August 20, 1996.

CHAPTER 5

FINAL RECOMMENDATIONS

The Commission held its final meeting in September of 1996 and adopted many recommendations. Most of the recommendations arose from Subcommittee discussions that began to be formulated beginning at the third meeting in Billings. Other recommendations came from Commission members' concerns that had not been covered in a Subcommittee. The recommendations are grouped in four basic categories. The first category is a recommendation for a new level of resources at the Youth Court level. The second category contains general revisions to the Youth Court Act. The third category contains general statutory changes, and the fourth category contains concerns and recommendations of the Commission that did not require legislation.

The relevant LC number for the bill draft request is contained in parentheses. A list of the bill drafts by LC number and with the temporary short title is included in Table 1 at the end of the chapter. The draft legislation is included in Appendix C. Copies of individual bill drafts will be available for the 1997 Legislative Session through the Legislative Services Division.

Youth In Need of Intervention

(1) The Commission recommends the substitution of the phrase and concept of "youth in need of intervention" for "youth in need of supervision" and the provision of an additional level of resources for Youth Courts (LC0229). The recommendation:

(a) amends the definition of "delinquent youth" to include a serious juvenile offender, a youth who violates a consent decree, or a probation violator;

(b) authorizes a youth assessment officer who is appointed by a Youth Court Judge, in addition to the juvenile probation officer, to provide initial intake and evaluation for either a youth who commits a status offense or by referral of a parent or guardian, school representative, or law enforcement officer. (In some jurisdictions, this may be the juvenile probation officer.)

(c) authorizes a youth assessment center or program, licensed by the Department of Public Health and Human Services, as a youth care facility. It

would be a staff-secured location in which a youth may be confined for up to 10 days to ascertain the youth's and the youth's family's needs. It provides an alternative level of placement between shelter care and detention and a place for multidisciplinary assessment of the youth and the youth's family.

(d) specifically includes runaways and habitual truants in the definition of "youth in need of intervention;"

(e) allows an assessment officer in addition to a juvenile probation officer to conduct preliminary investigations, using a probable cause hearing to place a youth in an assessment center;

(f) provides a clearer progression of graduated sanctions. It proposes informal consent adjustment as the first level of disposition for a youth following placement in an assessment center. Violation of that informal consent adjustment could trigger the next level of sanctions, using existing sanctions such as probation, in-state residence, commitment to the Department of Corrections (excluding placement in a youth correctional facility), restitution, community service, etc.

(g) allows the court to order the youth or the youth's parents or guardians to pay all or part of the costs for the adjudication, disposition, supervision, care, custody, and treatment of the youth or for the victim's counseling;

(h) allows a deferred imposition for a 45-day placement evaluation, though status offenders may not be placed at a state youth correctional facility for evaluation;

(i) provides that violation of a valid court order would return youth to Youth Court, upon hearing, to face sanctions;

(j) authorize the appointment of judges pro tempore and special masters (attorneys) to conduct preliminary nondispositive matters.

General Changes to the Youth Court Act

(2) The Commission included in its recommendations many general revisions to the Montana Youth Court Act (LC0229). The changes would:

(a) include accountability in the list of crimes that can be filed in District Court;

(b) allow the county attorney to file for leave to file information directly in District Court for serious offenses;

(c) limit the use of an informal consent adjustment and a formal consent decree to the equivalent of a single felony for each;

(d) increase the time for short-term detention from 96 hours to 10 working days;

(e) allow detention for formal consent decrees up to 10 days and for informal consent adjustments up to 3 days;

(f) amend into 41-5-523, MCA, that "parents have an obligation to assist and support the Youth Court in implementing its orders concerning a youth under its jurisdiction and are subject to the Court's contempt powers if they fail to do so";

(g) make explicit in the Youth Court Act the rights of victims and cross reference victims' rights language enacted in the 1995 Legislative Session into the Youth Court Act;

(h) amend 41-5-208, MCA, to give juveniles the same due process rights as adults;

(i) give District Court Judges the authority under 41-5-523, MCA, to require the successful completion of sex offender treatment for adjudicated sex offenders before the youth is discharged. (Note: use of extended jurisdiction if treatment is not complete by age 19.)

(j) generally reorganize (recodify) the Youth Court Act (LC0221).

Other Statutory Changes

(3) In other proposed legislative changes, the Commission recommended legislation to:

(a) provide that special education tuition that is charged to an out-of-district student be placed in the miscellaneous fund to be used for specific education costs incurred by the district or for other alternative service (including education) providers (LC0224);

(b) provide that school records, including the permanent file and the special education file, be transferred to the receiving school or alternative education provider or licensed detention center within five working days of request. The files must include regular education records and any of the following information that is in the student's file: special education test, original immunization records, and information regarding psychological tests, medical information, etc. (LC0225)

(c) provide that public schools, the Office of Public Instruction, and the Youth Court be included in information sharing for common clients with the Department of Corrections and the Department of Public Health and Human Services through interagency agreements, use of existing teams (such as youth placement committees, county interdisciplinary child information teams, and child protection teams) and computer data bases (e.g., CAPS). The Commission encourages cooperation and collaboration while protecting an individual's right to privacy. The information shared should be on a need-to-know basis. The school representatives who are involved in the information sharing and on the teams should have personal knowledge of and experience with the student. There must be strict professional standards so that the information is used for professional purposes only. Parents shall have the right to review the information, to be notified of the existence of the file and of the right to review the file, and to include a written response or clarification in the file. (LC0229)

(d) authorize a Judicial Pilot Project for families involved in Youth Court and other human services to provide a single point-of-entry through a community team and to utilize juvenile assessment program and family coordination teams. The pilot project includes a provision to allow special masters or court magistrates to assist Youth Court Judges in handling

nondispositive preliminary matters or research assistance to conduct research. (LC0227)

(e) amend the local option vehicle tax to 0.4% from 0.5% and mandate imposition of a 0.1% tax on vehicles with the revenue to be used for local Youth Court functions. (LC0228)

(f) amend the Extended Jurisdiction Prosecution Act to reflect the provisions in Texas statute. The Youth Court would be allowed to impose a prison sentence as a Youth Court sentence if a youth admits or is adjudicated to have committed any transferable offense up to the maximum provided by Montana law for an adult. If the Legislature is still in session at the time that the Supreme Court rules on the Barz decision*, the bill will be held in the second house awaiting the decision. If the Supreme Court rules the Extended Jurisdiction Prosecution Act unconstitutional, the Commission would seek the adoption of the proposed legislation. (LC0222)

General Recommendations

(4) In other general recommendations, the Commission:

(a) supports the Department of Public Health and Human Services proposal to increase chemical dependency funding for adolescents by \$200,000 each fiscal year of the 1999 biennium.

(b) expresses a concern that the state provide long-term, secure custodial care for chronically severely emotionally disturbed youth. The Commission requests that the Department of Public Health and Human Services and other agencies review the results of the first biennium of the mental health managed care contract to review whether the issues are resolved or if the needs are better defined to justify a separate proposal for the 1999 Legislative Session.

(c) recommends that the state provide a continuum of care for the treatment of youth who are adjudicated sex offenders and that the Department of Corrections examine all possible locations and treatment options. Serious

* In the matter of Toland, No. DJ-95-098, 13th Judicial District, July 29, 1996.

consideration should be given to where the offender population base is and to community-based treatment alternatives, even as the Department of Corrections is pursuing a program at Pine Hills through the long-range building program. If approved, it would be at least three years (FY 1999) before the Pine Hills program would be in operation. Pine Hills School may be a potential place for treatment in the continuum of care if appropriate staffing can be accomplished and only when a youth needs treatment in a secure correctional facility. The Commission recommends that the sex offender population be placed under a separate population cap in order to allow treatment to be completed without pressure from the general population cap.

(d) expresses a concern that a continuum of care should exist for mental health treatment of youth. The Commission understands that the state will be relying on the private sector, through managed care, to fully develop this continuum of care and to assist those who fall within the mandate of the managed care contract. There are limited funds that the state is willing and able to dedicate to treatment, and the Legislature has chosen those levels. However, the Commission is concerned for those families who will not be covered by the managed care contract and may have difficulty accessing and affording mental health services. The Commission requests that the Department of Public Health and Human Services and other agencies review the results of the first biennium of the mental health managed care contract to review whether the issues have been resolved or if the needs are better defined to justify a separate proposal for the 1999 Legislation Session.

(e) supports an Office of Public Instruction proposal to allocate 3% of the state's share of direct state aid to provide schools with resources to address conduct-disordered pupils through public and private community collaboration. The Commission recommends that the Office of Public Instruction and schools review a multidisciplinary approach (with juvenile probation and detention centers, the Department of Public Health and Human Services, and mental health providers) in order to cope with conduct-disordered youth more appropriately. The Commission sees the potential for alternative educational placements at juvenile detention centers in combination with education programs for the juveniles residing in the centers.

(f) recommends that an evaluation and reassessment be performed of the current rate matrix utilized by the Department of Public Health and Human Services for payment of private providers and that a formula be established to

calculate cost-of-living increases. Guidelines and policies from states similar to Montana should be researched in this regard; e.g., the ratio of the number of the clinicians to residents.

TABLE 1

**COMMISSION RECOMMENDATIONS TO BE SUBMITTED TO
THE 55TH LEGISLATURE
BY LEGISLATIVE COUNCIL BILL DRAFT REQUEST NUMBER**

LC 221 GENERALLY REVISE & RECODIFY MONTANA YOUTH COURT ACT

LC 222 AMEND JUVENILE EXTENDED JURISDICTION PROVISIONS

**LC 223 GENERALLY REVISE YOUTH COURT ACT JURISDICTION - (Combined
into LC 0229) - Reserved**

LC 224 SPECIAL EDUCATION FUNDS TO FOLLOW STUDENT

LC 225 SCHOOL RECORDS TRANSFER

**LC 226 JUVENILE INFORMATION SHARING (Combined into LC0229) -
Reserved**

LC 227 FAMILY-FOCUSED JUDICIAL PILOT PROJECT

LC 228 YOUTH COURT FUNDING

**LC 229 GENERALLY REVISE YOUTH COURT ACT; YOUTH IN NEED OF
INTERVENTION**

CHAPTER 6 CONCLUSIONS

The Commission accomplished a great deal in its 15-month study. The findings and final recommendations are outlined in Chapters 4 and 5, respectively. This chapter is intended to tie the findings and recommendations together and to provide some insight into the Commission's work. References to specific recommendations are noted in parentheses.

Fulfilling the Mandates of HB 240

The direction for the Commission's study was provided in House Bill No. 240. The text of the bill is included as a preface to this report and a discussion of the bill appears on page 2. The comprehensive review of the current juvenile justice system and of the current juvenile mental health service delivery system demanded most of the interim in itself. The members represented various points of contact with mental health or justice services, and the members as a whole worked all interim to develop a basic, yet comprehensive, understanding of all of the elements of all of the various entities providing justice and mental health services for juveniles.

In the process of touring the state, the Commission received testimony from various providers in each mental health region, including juvenile probation and parole officers, mental health representatives, state agency representatives, private providers, school representatives, the Youth Justice Advisory Council, Tribal representatives, local governments, local programs, state juvenile facility and program representatives, other study committees, and law enforcement. The Commission requested testimony from a variety of interests at each meeting and held public hearings to give everyone the opportunity to speak. The diversity of the testimony and programs across the state ensured that the Commission learned something new from each region, which also made it difficult to develop blanket recommendations applicable to the whole state.

Past and Present Programs

The Commission was charged with including a comprehensive review of past and present programs used to successfully rehabilitate youth and reduce juvenile crime. The public hearings and provider testimony provided a partial

review of successful programs in treatment, rehabilitation, and reducing crime. The Commission was also directed to include a review of successful programs in other states and nations. A staff report entitled "Successful Programs in Juvenile Justice in the United States", which reviewed a variety of programs from other states, was presented to the Commission. Because juvenile justice is a hot topic nationally, throughout the interim the Commission continued to receive additional news articles and materials on many other successful programs.

A successful program was not in and of itself defined as there are many factors used to determine success. Some are mutually exclusive and others overlap. Often success is framed as the system being sufficiently retributive or providing sufficient punishment, deterrence, or rehabilitation. Recidivism and reduction in crime are often used as quantitative measures, yet without sufficient data-gathering tools and good data, these claims are hard to measure in the first place and hard to verify when claimed.

Many programs were brought to the Commission's attention in its public hearings as being successful in the eyes of those testifying. The Commission did not judge these programs by any specific standards, but accepted the local view. This list is not exhaustive, but only a sample of the programs about which the Commission received positive testimony:

- (1) Restitution program - Lincoln County, 16th Judicial District
- (2) Community work program - 16th Judicial District juvenile probation office
- (3) victim mediation - juvenile parole eastern region
- (4) Boys and Girls Club - Lame Deer
- (5) Spring Creek Day Treatment - Billings
- (6) Youth Court Conference Committee - Billings
- (7) MRM caseworker - Billings
- (8) MRM program in Great Falls
- (9) Cascade County Crisis Center at the juvenile detention center
- (10) Cascade County juvenile sentencing panels
- (11) Lewistown juvenile probation office - guardian ad litem, tracker program
- (12) Restitution and community service program - 5th Judicial District Juvenile Probation Office
- (13) PAL/SWAT program in Helena (alternative public education and adolescent treatment)

- (14) House arrest tracker, community service program, victim services, and community retention and accountability program - 1st Judicial District
- (15) Missoula Minors in Possession Court Screener
- (16) Prince William County, Virginia, model secure juvenile facility
- (17) Sacramento County, California, model secure juvenile facility
- (18) Serious Habitual Offender Comprehensive Action Program (SHOCAP)

Development of Treatment Continuum

The Commission was directed to include the development of recommendations for a treatment continuum that provides community protection, youth accountability, youth competency, meaningful restitution, and successful reintegration of youth into the community. Many of these goals are stated in the declaration of purpose of the Youth Court Act (41-5-102, MCA) and are principles of Balanced and Restorative Justice, discussed on page 3.

The Commission made some recommendations toward the development of a treatment continuum, but it was beyond the Commission's ability in a single interim to develop recommendations for a single treatment continuum from a structure of numerous, interrelated, independent agencies. Many of the Commission's findings identify deficiencies and problems in the development of a continuum. The basic understanding of all of the services available and the state, local, and federal agencies that provide funding and services was an enormous task in itself; add to that trying to understand state agencies and their responsibilities as they were experiencing executive reorganization and trying to monitor the state's pursuit of federal waivers and the development of an unprecedented statewide managed care system for all adult and children's mental health services.

Roles and Responsibilities

The Commission was charged with including in its study a definition and delineation of roles and responsibilities of the various state and local governmental agencies. The Commission monitored the state agencies' process of reorganization as the interim progressed. There were Commission members from the Department of Public Health and Human Services and the Department of Corrections who provided regular updates as each department accomplished the transition brought about by reorganization. The Commission, in essence,

monitored the agencies development of the definition and delineation of their own roles and responsibilities in light of reorganization. It will take some time before the dust settles to truly analyze how the new organization of state agencies interacts with the local Youth Court practices and the implementation of managed care of mental health services.

The Department of Corrections referred to the 1993 and 1995 Legislative Audit Reports in its development of juvenile corrections responsibilities. The Inventory in the Appendix provides information that the Commission gathered as to how the various entities are developing and a summary of Department of Corrections' proposals.

The Commission's findings, included in Chapter 4, point not only to many pieces of the system that are lacking but also to areas of promise. Throughout the interim, the Commission heard from representatives of the state agencies, both Commission members and others, regarding plans of the agencies for reorganization that have the potential to address weaknesses. The Commission made some general recommendations that do not require legislation on programs within the Department of Public Health and Human Services, the Department of Corrections, and the Office of Public Instruction (Recommendations (4)(a) through (4)(f)) on areas in which the members expressed concern and support.

The Commission supported a proposal by the Department of Public Health and Human Services to increase chemical dependency funding for adolescents by \$200,000 during each fiscal year of the 1999 biennium. Chemical dependency is an area of services for juveniles that the Commission found lacking under mental health and justice services, yet it is an area that is directly implicated in inappropriate and criminal behavior by youth.

The Commission also expressed a concern for long-term, secure custodial care for chronically severely emotionally disturbed youth in its findings on services. This concern is expressed in many of the findings under mental health and justice services. There is no in-state, state-operated facility for these youth, and they can be sent out of state for residential treatment. Relocation is a hardship on the youth and family alike and competes with other in-state programs for resources.

The Commission specifically addressed continuum of care issues for adjudicated sex offenders and for mental health services and made findings regarding both groups under mental health and justice services. The Department of Corrections has a proposal to build a sex offender unit at Pine Hills School. The Commission recommended that an entire continuum of care be developed for the treatment of youth who are adjudicated sex offenders. Not all youth need a secure correctional facility for sex offender treatment, and Pine Hills School is a facility that serves only males. The Commission expressed a desire that the Department of Corrections examine all possible locations and treatment options for sex offender treatment in the state. Contracts with private providers, community out-patient treatment, and other alternatives would enable youth to be close to their family when visitation and cooperation by the family would be conducive for successful treatment. The Commission was also concerned that Pine Hills School could attract appropriate staff and that the youth could stay until treatment was completed.

A related recommendation (Recommendation (2)(i)) would authorize a Youth Court judge to require successful completion of sex offender treatment for adjudicated sex offenders before the youth is discharged. The extended jurisdiction prosecution provisions could be utilized if a youth turned 19 years of age and had not completed treatment.

The Commission was concerned with the continuum of care for mental health treatment of youth. (See general observations and mental health under mental health and justice services). The managed care proposal will turn over the administration of mental health services to a private managed care organization. The program will be funded with state and federal funds and will have certain eligibility requirements; a youth must be either Medicaid-eligible or low-income and must be seriously emotionally disturbed. The Commission is concerned about families who may not meet these requirements and for whom mental health treatment will be unaffordable. The Commission requested in its recommendation that the managed care contract be reviewed prior to the 1999 Legislative Session to see if further recommendations to assist those families are needed at that time.

The Commission heard a great deal about conduct-disordered youth and the problems that school, juvenile probation, and mental health professionals experience with them. (See school issues in findings.) The Office of Public Instruction presented a proposal in the executive planning process to allocate

a portion of the state aid to provide schools with resources to address pupils with conduct-disorders. The Commission endorsed this proposal and recommended that the proposal be expanded to include not only school personnel, but all of the individuals in a community who deal directly with youth, and encouraged a multidisciplinary approach. The need for alternative sites for education was expressed by many, and the Commission saw the potential to pool resources and use detention centers, juvenile probation offices, or group homes for alternative education sites for youth who cannot function in a regular classroom, who have been expelled, or who are in alternative placements.

The Commission included both as a finding and a recommendation that the Department of Public Health and Human Services evaluate and reassess the current rate matrix for payment of private providers. Minimal cost-of-living and rate increases have been appropriated in the past, negatively affecting the private providers who deliver housing and treatment for many of these youth. While the Commission was in eastern Montana, it received testimony that there were disparities in Montana's and North Dakota's policies that may contribute to Montana's higher costs. The Commission expressed a desire that the rules and guidelines for private providers, such as those for staff-to-youth ratios, be explored for possible modification to increase flexibility and efficiency in the programs.

Youth Correctional Facility Effectiveness, Efficiency, and Feasibility of Privatization

The Commission was charged with reviewing the effectiveness and efficiency of each state youth correctional facility and each detention facility operated by the state, including the feasibility of privatizing each facility. The Commission received a staff report entitled "Effectiveness, Efficiency, and Privatization Issues in Juvenile Correctional and Detention Facilities". The Commission made several findings about detention, shelter care, and placement options under mental health and justice services and also included a specific section on Pine Hills School and the Montana Youth Alternatives Program. The task of reviewing effectiveness and efficiency was difficult as the administration of Pine Hills School was assumed by the Department of Corrections in the reorganization and the School was responding to many of the issues in the 1993 Legislative Audit Report at the same time the Commission was conducting

their study. The Commission toured Pine Hills School and heard updates throughout the interim on their progress.

Detention facilities are operated by counties (in three of the five detention regions) rather than by the state. The Commission toured the three long-term, secure detention facilities. However, just prior to the Commission's visit to the Flathead County facility and the Cascade County facility, each had experienced a very recent change in its director position and was in a state of flux. The Commission did state in its findings that appropriate educational and treatment programs in existing detention facilities were lacking, as were sufficient numbers of detention beds.

The Department of Corrections had assumed responsibility for licensure of detention facilities and worked on developing stricter standards in conjunction with the Board of Crime Control throughout the interim. Licensure and standards are other areas that may require future review. The Commission did not make any recommendation toward privatization of the correctional facilities or detention centers. The Commission reviewed the Montana Youth Alternatives Program, which is a public and private partnership, but made no specific recommendations.

Legislative Recommendations

The primary impetus for the Commission's study was a general concern about the Montana Youth Court Act. The Youth Justice Advisory Council had pursued legislation in 1995 for the study of the Act, and because of the many proposed legislative changes to the Act, House Bill No. 240 took on a new importance. The final version of the bill reflected the understanding that juvenile justice issues were tied to parts of many other governmental and social programs. Therefore, the study was expanded to address juvenile justice and juvenile mental health.

The Commission remained concerned for the state of the Youth Court Act and appointed a Subcommittee to review it in depth. In the course of the public hearings, the Commission did not hear testimony that the Youth Court Act itself was problematic. The majority of concerns raised were not with the specific language or tools that the Youth Court entails, but with the lack of resources available for carrying out the provisions of the Youth Court Act. The

Commission heard this testimony from professionals in the field as well as from parents and youth.

The Youth Court Act Subcommittee did make recommendations, many of which the Commission endorsed, but there was not an entire rewrite of the Youth Court Act as some may have envisioned. The Commission did recommend a recodification and reorganization of the Youth Court Act to make it easier to read and understand (Recommendation (2)(j)). This recommendation is manifested in LC0221, which will not contain any major substantive changes to the Act.

Other recommendations (Recommendations (2)(a) through (2)(i)) to substantively amend the Act were intended to address many of the findings that the Commission made. These changes will be included in LC0229 and respond to concerns for more sanctions and a clearer gradation of sanctions for youth, for holding youth accountable, for the transfer of serious youth offenders to adult court, for greater parental responsibility for youth, and for victims' rights.

In response to a District Court ruling (In the matter of Toland, No. DJ-95-098, 13th Judicial District, July 29, 1996), the Commission also adopted a recommendation (Recommendation (3)(f)) that will be included in a bill, LC0222. The recommendation addresses concerns with the juvenile extended jurisdiction prosecution in the Act.

There were nine general areas for which the Commission made findings. The Commission learned of insufficient juvenile justice and mental health services across the state and in all programs serving youth. There is a lack of institutional and community resources, such as in the areas of collaboration, detention and placement options, probation and parole resources, services to status offenders and first-time offenders, followup for minor offenders, mental health resources for youth, and resources for immediate consequences.

Families and community involvement are included in the second area of findings. Many families are experiencing stress, and communities need to be more involved with youth. The tension between the desire of some parents for more parental control and the need for other parents to assume greater responsibility and not rely on the system to "fix" their children was apparent. Many families need help and assistance early on to be able to raise their own children. Many parents testified that their child had to commit a crime or be in

serious trouble before the juvenile justice system would lend a hand. The juvenile probation staff testified that there were not enough staff or program resources to deal with the less serious offenders because they were dealing with the violent youth who were committing serious crimes.

Youth issues and prevention and early intervention are additional areas of findings. Youth need adults in their lives, they need to build self-esteem within families, schools, and communities. Youth need effective, immediate sanctions that are sufficient, appropriate, and relevant. The earlier a youth has effective guidance, the more likely it is that the guidance will help them to learn from their actions, to be accountable, and to make better choices in the future.

Another of the Commission's major areas of recommendations is intended to address many of the issues in these four areas of findings: services, family and community involvement, youth issues, and prevention and early intervention. The Commission made recommendations (Recommendations (1)(a) through (1)(j)) replacing the category of "youth in need of supervision" with the category of "youth in need of intervention". These recommendations will be included in the draft legislation LC0229. The recommendations provide an additional level of services for Youth Courts through a youth assessment program. The youth assessment program can be used as an immediate consequence for youth. In order to determine the most appropriate action, the concept of an assessment officer and an assessment program is intended to provide a single point of entry into the justice and human services system, to provide a multidisciplinary approach to identifying a youth and a youth's family's issues, and to assess the youth and family at the earliest contact with the system.

Juvenile probation officers perform much of the evaluation function at the present time, but they testified that they are having to spend their time with the more serious offenders. The assessment program could provide a new impetus to rally other service providers such as mental health and social workers. Any jurisdiction that chooses to use the assessment option may use it to relieve the burden on the juvenile probation officers, to offer a more holistic approach to addressing a youth's problems, and to be able to provide an immediate consequence for inappropriate behavior.

The Commission also made findings in the areas of courts, schools, and gathering information and data. The Commission found that there needs to be

better coordination between Justice Court, City Court, and District Court. Many youth are charged with a minor in possession offense in Justice Court and may also have an action in Youth Court, but the neither judge may be aware of the youth's situation in the other court. Also, families may be involved with other cases in District Court involving civil issues of divorce, child support, or child protective services or in a criminal case.

The Commission's recommendations include a family-focused judicial pilot project, which will be presented in LC0227, that would route a family's legal issues to a single judge (Recommendation (3)(d)). This recommendation: (1) shares many of the elements of the "youth in need of intervention" concept, such as the single point of entry and assessment programs; (2) hopes to focus energy on the multidisciplinary approach to assisting a youth in the justice system; and (3) allows the use of special masters or judges pro tempore who can assist with preliminary nondispositive matters in Youth Court, which may assist in reducing the delay in processing youth and provide immediacy in the process. This addresses criticisms that the Commission often heard and that is reflected in the findings.

Not all youth are involved in the juvenile justice or mental health systems, but all youth in either system have been or are in the school system. Schools need to be a part of the information loop. They also need to share information with each other. The Commission made two recommendations to this end. Recommendation (3)(c) addresses the sharing of information on juveniles. When there are common clients between schools, the Department of Public Health and Human Services, and the Department of Corrections, information must be able to be shared. Recent changes in the federal Family Educational Rights and Privacy Act of 1974 (FERPA) allow schools to share records with juvenile probation officers under certain conditions. These changes were made to expressly assist community efforts in identifying at-risk and delinquent youth, to provide services, and to increase information sharing. The Office of Public Instruction has made these changes in their Requirements and Guidelines for Student Records.

There are current statutorily identified groups in place that can be used at the local level to share information, such as youth placement committees, county interdisciplinary child information teams, and child protection teams. One improvement that the Commission hopes to make through its recommendations is requiring that the school representative on these teams be someone who has

a personal, working knowledge of the student. Many times, the school representatives may have never worked with the student and relevant information is not conveyed in the development of options for the student.

The recommendation on juvenile information sharing, which will be included in LC0229, should address some of the data issues that the Commission identified. The Commission received two staff reports entitled, "Information-Sharing and Confidentiality Provisions Regarding Information on Youth" and "State Automated Systems that Include Information on Youth".

Section 52-2-211, MCA, authorizing county interdisciplinary child information teams, authorizes counties to collaborate, but these statutes have not been widely used by counties to establish information sharing. Some counties attempted to use them and had funding difficulties. Other counties seem to be able to use them effectively. Through the youth assessment placements, the Commission hopes to encourage more collaboration and use of teams, such as the county interdisciplinary child information teams. The Commission leaves the method of collaboration up to the county.

The Commission addresses issues contained in the reports in its findings on information and data gathering and sees a lot of room for improvement. The Commission's recommendation would improve existing statutes on information sharing and make them more explicit regarding use of existing teams and protecting the right to privacy while addressing collaboration and the need to know. Professional standards and parental rights are other areas of importance to the Commission members.

Ongoing agency activities should also assist in improving information sharing and data gathering. The Department of Public Health and Human Services has been implementing the Child and Adult Protective Services (CAPS) system. This data base is intended to assist social service workers in the field with case management information on child protective services, adult protective services, juvenile corrections, juvenile probation, and tribal social services. There are provider components that track licensure, contracts, payments, and placements for youth in out-of-home care. Many of these youth are placed through the Youth Court juvenile probation officers, and there has been agreement to incorporate the current Juvenile Probation Information System (JPIS) into the CAPS system. Because the CAPS system is still in its initial phases, there have been delays incorporating JPIS, but the capability is on the horizon.

Commission members and school representatives ideally would like schools to have access to the CAPS system as well, but there are many confidentiality, funding, and practical considerations (e.g., hardware) before that option could even be considered. As a practical matter though, a school representative can participate in these multiagency groups and have access to relevant information through the representatives from Department of Public Health and Human Services or Youth Court and work toward assisting these youth in their needs.

The Commission also made a recommendation, Recommendation (3)(a) that will be included in LC0224, to provide that special education tuition that is charged to an out-of-district student be placed in the miscellaneous fund to be used for specific education costs incurred by the district. Funding not being accessible for use by the school for actual expenses was a problem that was testified to many times. When special education students come from outside of the district, because of an out-of-home placement, for example, the new school district often must develop special programs or resources for the student. If the funding is not available, it affects the other student resources and can be a very disruptive event for the student, the teacher, and the other students in the classroom. The recommendation also is intended to provide that alternative educational settings could be used to provide education services in conjunction with other programs, such as licensed detention centers or group homes.

The Commission also made a recommendation to mandate that special education and other school records be forwarded to a youth's new school district. A complaint voiced by many was that the schools do not know anything about youth who are being enrolled in their schools. If the youth is involved in an out-of-home placement or has special education needs and the records do not follow the youth, the youth may exhibit disruptive behavior and may not be receiving the special education that is required. Recommendation (3)(b) will be incorporated into LC0225 to address this concern.

The Commission realized that their recommendations would not be without cost and adopted a recommendation to provide some additional funding for Youth Court activities. There is a 0.5% local option vehicle tax that was initially intended to assist counties with District Court expenses. The Commission has recommended that the local option vehicle tax be reduced to 0.4% and the remaining 0.1% be mandatory, with the revenue to be retained by the county specifically for Youth Court expenses. This funding may not be significant in smaller counties, but pooled with other counties in a judicial district it may allow

for some additional programs, such as the assessment officer, special masters, or other programs for status offenders or first-time offenders. The Commission believes that if greater collaboration occurs at the local level, then existing resources may be pooled more effectively.

Areas Without Recommendations for Legislation

House Bill No. 240 required that the Commission's "report must also contain a discussion related to any area of study for which the commission does not recommend legislation and an explanation of why legislation is not recommended". A relevant discussion to this mandate is found in Chapter 2 under Subcommittee Work. That section summarized the Subcommittee recommendations that were not endorsed by the Commission.

In addition, there were several recommendations that were raised at the final meeting that were not endorsed or acted upon by the Commission. Representative Molnar proposed an amendment to 41-5-601, MCA, that was stricken by the 1995 Legislature from his bill (HB 540) to amend the Youth Court Act. The amendment states the following:

Except as otherwise provided in this section, information shall be given concerning a youth or any matter or proceeding in the youth court involving a youth proceeded against as, or found to be, a youth in need of supervision.

If a youth as to whom there are active issues relating to drug use or crimes is placed in foster care, the court shall notify the school that the youth will attend of the issues and the school may refuse to accept the youth as a student, but may not refuse to accept the student in violation of the federal Individuals With Disabilities Act or the federal Americans with Disabilities Act.

The identity of a youth who for the second or subsequent time admits violating or is adjudicated as having violated a statute must be disclosed by youth court.

Representative Molnar said that his amendment was an addition to 41-5-601, MCA, before the section was repealed. His amendment would mean that if a youth is in treatment for a drug problem, the school must accept him or her. If the youth is not in treatment or if the youth gets kicked out of school because of a bad urinalysis, for example, schools no longer have to accept them but they must find alternative education for the youth. It also provides a one-time break for the juvenile. The Commission was concerned with the broad language

and believed that some of the information-sharing issues had been addressed in other recommendations.

Representative Molnar suggested another proposal that is based on a point system. A misdemeanor or status offense is one point, while a felony is three points. Under this proposal, there are increments of 45 days, 90 days, and 180 days with a 1-year timeline. When a youth reached 10 points, the youth would be considered a habitual offender and must go to Pine Hills School for 90 days. If the offender can use or needs treatment, such as in the Yellowstone Treatment Center (YTC), the sentence is cut in half--45 days on a 90-day sentence, etc. The offender is placed at YTC under a contract. Serious habitual offenders (SHOs) are the leaders and are the youth who get other youth into trouble--it is not the youth using drugs but the ones selling the drugs. SHOs would get a mandatory 180 days in Pine Hills. However, if sent to YTC for treatment, the sentence would also be cut in half. Representative Molnar said that the proposal also requires that all funding follow the youth. Pine Hills is an accredited school and, under his proposal, the ANB money would be taken from where the youth is no longer attending school and put where the youth is.

Representative Molnar provided draft legislation that would authorize a judge to hold responsible for the cost of substitute care those who contributed to the delinquency of a minor. The proposal strikes language referring to 40-5-209, MCA, and inserts language that states "or those who contributed to the delinquency to pay an amount based on ability to pay an amount arrived at by personal interviews and investigation. Preference must be given to those who contribute to the delinquency of a minor." The proposal requires that the child support investigator investigate or ask what the family's liabilities are and what it owes--and not just go by how much the family did or did not pay in taxes. The Commission was concerned that the person who contributed to the delinquency of a minor was not a party to the proceeding and that it would require a separate proceeding to make that determination. It also was not apparent that the separate proceeding belonged in the Youth Court Act.

Representative Molnar's proposed draft legislation also addresses the functions and qualifications of juvenile probation officers. Language regarding a master's degree in behavioral science and a bachelor's degree as being top qualifications was stricken. Language that a judge may appoint any reputable person as a probation officer who has had experience in work of a nature related to the duties of a chief probation officer was left in. His purpose for the proposal was

to get a wide diversity in the juvenile probation officer field. The language "to assure that all terms of probation are followed and to implement and manage programs to enable youth to earn money to pay restitution" was added to the powers and duties of probation officers. The legislation also eliminates the juvenile probation officer as the primary person in charge of the youth when the youth is under the auspices of the Department of Corrections. The language states "a youth placed in a state correctional facility or other program must be supervised by the department or other appropriate personnel."

The Commission took no action on these proposals but encouraged Representative Molnar to prepare materials for this final report. No materials were submitted.

Areas for Future Study

Although the Commission made no specific recommendations to this effect, there should be a followup review or study after the changes from reorganization have been implemented for a period of time and after managed care for mental health has been in place. A review may be able to determine whether improvements have been made toward a single continuum of justice and mental health services to youth.

The Commission heard constantly of a lack of resources such as juvenile probation officers, juvenile parole officers, mental health services, funds for chemical dependency, and services for conduct-disordered youth. The lack of resources needs to be more fully explored. There is a general discussion of funding issues in the Inventory in the Appendix, but the discussion is illustrative of how difficult it is to understand the big picture in funding services for youth. Some of the Commission's recommendations intend to bring greater collaboration among the various entities that work with youth in hopes that a coordination of resources will also occur and that what few resources there are at the local level will be pooled and used more efficiently and effectively.

Once the ramifications of reorganization and managed care are more apparent, a policy discussion should be held about who is responsible for what. In the Youth Court Act, the County Commissioners are responsible for providing necessary funds to Youth Court. If the Youth Courts are underfunded, what is preventing counties from appropriating sufficient funds? Are people willing to live with the underfunding aspect of local control? Do communities want state

assumption of responsibilities in order to have greater standardization of services? Will the state ever fund the services to the satisfaction of the people? What are the alternatives?

The policy choices, the competition for resources, and the interaction of the federal, state, and local governments in the provision of resources for youth could not be fully explored. If society believes that juvenile justice is an important issue, then society must choose to fund the programs sufficiently and be able to expect that the programs that are funded are effective and in the best interests of the community and the youth.

Another area for future study is the incorporation of the JPIS into the CAPS system. Crime statistics make good press, but the accuracy and completeness of the statistics is vital to making good public policy decisions. The JPIS data have been improving since 1993, yet the data are not comparable from year to year. Issues for future review and study include: what changes will be made when JPIS is incorporated into the CAPS system, what guidelines and controls are being placed on the quality of data being entered into the system, and when can a baseline be established so that data can be used for comparison purposes in future years. It is difficult to know if recommendations and policy choices are positively affecting the problem if the numbers keep changing, if the data entered is not standardized, or if there is no legitimate comparison from year to year.

Other general statistics on juvenile justice and mental health services must be improved upon as well. The CAPS system is a good beginning, but other areas, such as schools and courts, are not in the system. Discussion should take place as to whether the CAPS system can be all things to all people or whether the schools and courts should develop their own systems and make provisions to share information either electronically or through work teams. The schools have no statewide data base for student records. The courts are implementing an independent system, but there has not been coordination with the CAPS system.

The Commission did not address the issue of the Department of Corrections housing in the Women's Correctional Facility female juveniles who had been transferred to District Court and sentenced as adults. The Commission received information from the Department of Corrections that the Department intends to

address that issue in the 1997 Legislative Session. This issue should be monitored and may warrant future attention.

The split of state and District Court control over parole and probation, respectively, was an issue that the Commission did not explore deeply and that may also warrant further attention. The two separate functions may need to be better defined so as to understand if there are inherent differences, if the roles and functions could be redefined, and if new functions need to be assigned. The role of the juvenile probation officers and who should administer them as well as how much standardization in Youth Court practice is truly necessary statewide were questions that were raised but not answered by the Commission's study.

Concluding Remarks

At the very least, the Legislative Audit Report and the placing of juvenile corrections under the Department of Correction has brought new administrative attention to the matter and there is action on this front. The results and the various elements in the "system" should continue to be monitored to see if the problems recognized by the legislative audit are corrected, if the reorganization has had any unintended consequences, and if there need to be further adjustments toward the development of a single continuum of services in the justice or mental health areas for youth. The Department of Corrections will have a corrections orientation that will differ from the child welfare orientation of the former Department of Family Services. There will always be a child welfare element in juvenile justice, and that element within the Department of Corrections must be evaluated periodically to assure that there is collaboration and coordination with the child welfare system in the Department of Public Health and Human Services so as to not compete for the allotted resources and to ensure that the best interests of youth are paramount.

Juvenile justice is a quintessential example of local control, wherein each community makes decisions for itself, including funding decisions, program decisions, and decisions about the levels of tolerance for juvenile behavior. These community decisions can be positive attributes. Some of the negative attributes can be wide disparities in the treatment of youth from community to community, from retaining youth in the communities until all resources are exhausted to sending youth at the earliest opportunity to correctional facilities at the high end of the system. If community tolerance is low, a youth may be

placed with the state for a lesser offense than one committed by another youth from another jurisdiction. At this level, it becomes a state problem and state policymakers will then have to solve how to approach the disparities. When state and federal funding becomes available and it is limited, it sets up competition for resources. Are there fairness issues involved when youth are not given access to potential programs because of a lack of resources or interest at the local level? The Commission did not get to these questions, and the answers may help the state and localities to identify what their real values and concerns are and to then address them in a systematic fashion.

APPENDIX A

JUVENILE JUSTICE AND MENTAL HEALTH INVENTORY

The following is a listing of the various entities in state and local government that have juvenile justice and mental health resources. On the following pages, a map illustrates the location of many of the resources and an organizational chart depicts the various resources by agency structure and function. The interrelationships between agencies is discussed in Chapter 3 in the description of juvenile justice and mental health services.

Local Government

Detention, mainly used for preadjudication placement but also used for parole and probation violations, is the responsibility of the counties. The Montana Board of Crime Control distributes state and federal funds for detention to the counties through a grant program.

Regional detention centers:

Western Region

Long-term secure: Flathead County Juvenile Detention Center, Kalispell

Short-term secure: Lincoln County Juvenile Detention Facility, Troy

Ravalli County Detention Facility, Hamilton

Nonsecure: Missoula Youth Court Home Arrest Program, Missoula

Southwestern Region

Long-term secure: none

Short-term secure: Rivendell Detention Center, Butte

Nonsecure: Beaverhead County Holdover Program, Dillon

Butte/Silver Bow Holdover Program, Butte

Northcentral Region

Long-term Secure: Cascade County and Regional Youth Services Center, Great Falls

Nonsecure: Blaine County Holdover Program, Chinook

Phillips County Holdover Program, Malta

Helena Youth Resources Holdover Program, Helena

Pondera County Holdover Program, Conrad

Southcentral Region

Long-term secure: Yellowstone County Youth Services Center, Billings

Eastern Region

Long-term secure: Fort Peck Agency Juvenile Detention, Poplar

Short-term secure: Valley County Juvenile Detention Facility, Glasgow

Nonsecure: 7th Judicial District Holdover Program, Glendive

15th Judicial District Holdover Program, Wolf Point

16th Judicial District Holdover Program, Miles City

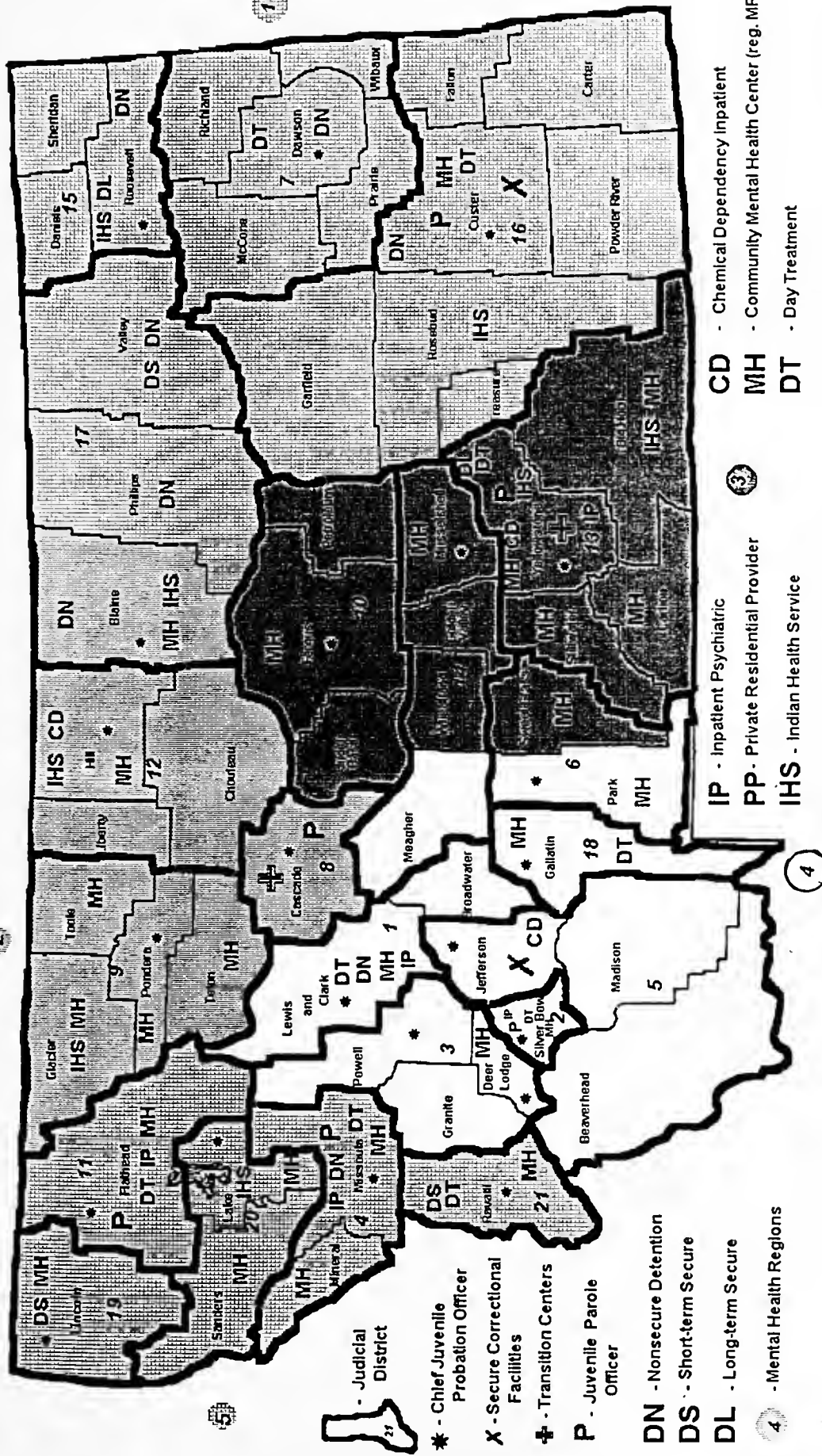
17th Judicial District Holdover Program, Glasgow

Youth Court

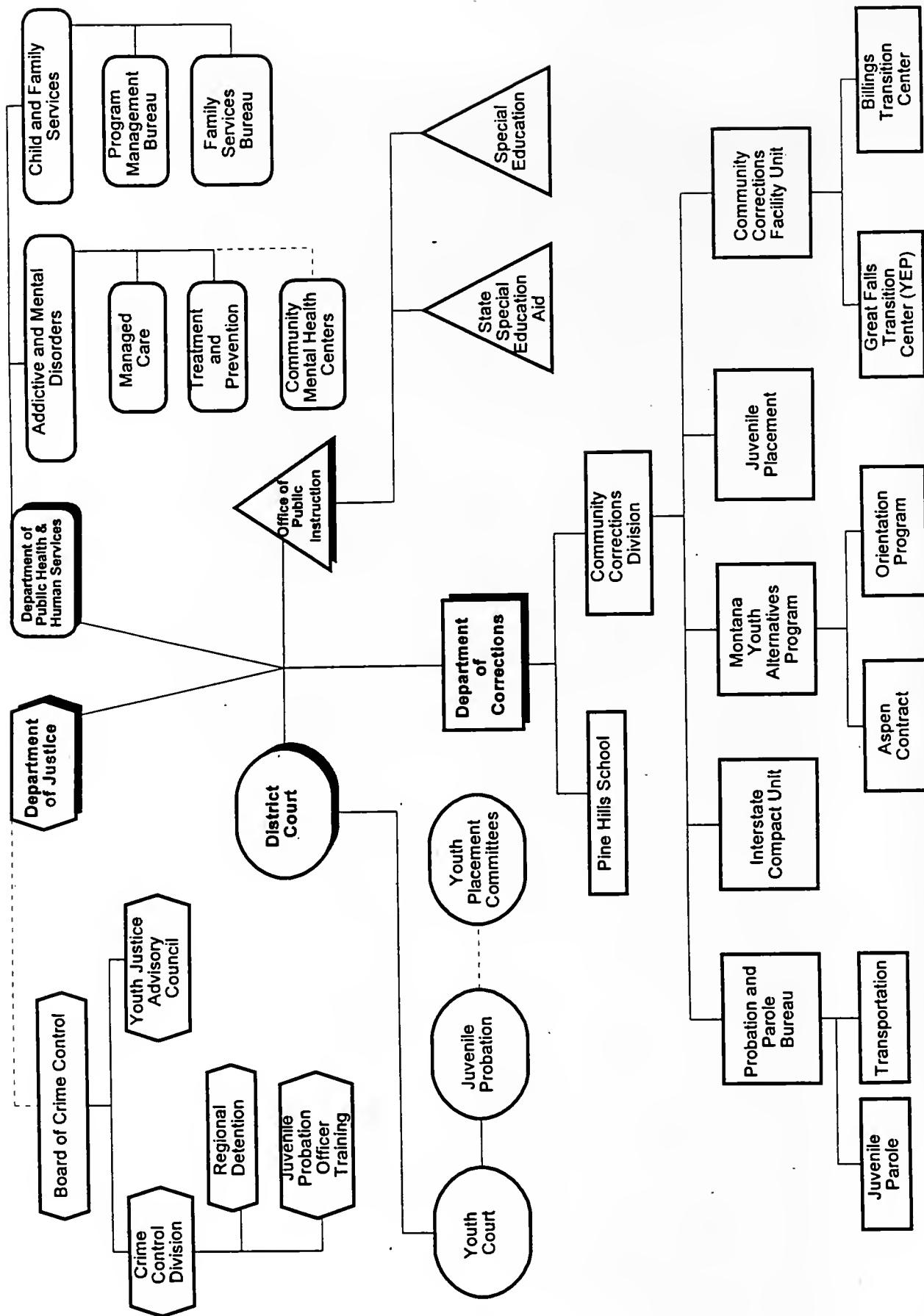
Youth Courts are funded by the 56 individual counties within the 21 judicial districts. On the following page, the fiscal year 1996 juvenile probation budget expenditures by county are listed. Nine counties list \$0 budgeted expenditures. Those counties are lightly populated counties of less than 10,000 persons, and Youth Court costs may be included in other categories, e.g., judicial services. Juvenile probation costs are 26.5% of the total budgets of all counties, and the total dollar amount is an approximate 99% increase from fiscal year 1991. Juvenile probation is the responsibility of the Youth Court, and there are 82 juvenile probation officers in the 21 judicial districts. Juvenile parole or aftercare is the responsibility of the Department of Corrections.

JUVENILE JUSTICE AND MENTAL HEALTH RESOURCES

2



MONTANA JUVENILE JUSTICE AND MENTAL HEALTH RESOURCES



Department of Justice
Montana Board of Crime Control

The Crime Control Division, under the supervisory direction of the Montana Board of Crime Control (MBCC), provides financial support, technical assistance, and supportive services to state and local criminal justice agencies. The Board administers and awards funds for several grant programs, including the federal Juvenile Justice and Delinquency Prevention Act of 1974. Federal funding is provided for juvenile justice programs and for administration of the federal Juvenile Justice and Drug Enforcement block grant programs.

In the 1995 biennium, state special revenue funded the administration of the Youth Detention Services grant program. The 1995 Legislature, in Senate Bill No. 83, de-earmarked these funds and instead appropriated general fund money. The funds de-earmarked in Senate Bill No. 83 include income from 9.1 % of net lottery proceeds and include \$2 million for pass-through grants for youth detention services for the 1997 biennium.

Funding for all other Crime Control Division activities comes from the general fund, including the Peace Officer and Standards Training Program, which includes training for juvenile probation officers and state matching funds for the Juvenile Justice and Drug Enforcement federal grant programs. Juvenile justice pass-through grant funds for the 1997 biennium totaled \$1.2 million. The Crime Control Division was authorized to spend \$150,000 in federal funds to be awarded from the Office of Juvenile Justice and Delinquency Prevention.¹

The Commission was partially funded through grant money awarded by the Youth Justice Advisory Council, which is administratively attached to the Crime Control Division.

TABLE 2
FY 1996 COUNTY DISTRICT COURT BUDGET
JUVENILE PROBATION

BEAVERHEAD	\$29,932
BIG HORN	\$38,592
BLAINE	\$61,500
BROADWATER	\$16,075
CARBON	\$54,760
CARTER	\$4,800
CASCADE	\$1,445,962
CHOUTEAU	\$13,600
CUSTER	\$67,141
DANIELS	\$13,150
DAWSON	\$50,252
DEERLODGE	\$108,929
FALLON	\$0
FERGUS	\$123,167
FLATHEAD	\$418,487
GALLATIN	\$232,473
GARFIELD	\$4,090
GLACIER	\$27,570
GOLDEN VALLEY	\$0
GRANITE	\$0
HILL	\$67,615
JEFFERSON	\$60,160
JUDITH BASIN	\$6,000
LAKE	\$164,912
LEWIS AND CLARK	\$329,936
LIBERTY	\$1,610
LINCOLN	\$294,648
MADISON	\$39,256
MCCONE	\$10,351
MEAGHER	\$17,553
MINERAL	\$8,609
MISSOULA	\$539,391
MUSSELSHELL	\$31,940
PARK	\$79,252
PETROLEUM	\$3,400
PHILLIPS	\$45,550
PONDERA	\$26,224
POWDER RIVER	\$0
POWELL	\$0
PRAIRIE	\$4,696
RAVALLI	\$107,559
RICHLAND	\$0
ROOSEVELT	\$33,400
ROSEBUD	\$0
SANDERS	\$0
SHERIDAN	\$23,600
SILVER BOW	\$319,077
STILLWATER	\$32,274
SWEETGRASS	\$9,040
TETON	
TOOLE	\$63,650
TREASURE	\$3,487
VALLEY	\$46,320
WHEATLAND	\$2,000
WIBAUX	\$5,643
YELLOWSTONE	\$835,450
FY96 TOTAL	\$5,923,083
% OF TOTAL	26.5%
FY91 TOTAL	\$2,975,948

Source: Montana Association of Counties, Montana County Budget Report, FY 1995-96.

TABLE 3
STATEWIDE EXPENDITURES AND BUDGET FOR JUVENILE DETENTION
(as reported to Montana Board of Crime Control)

	<u>FY94</u>	<u>FY95</u>	<u>FY96 BUDGETED</u>
Secure detention	\$691,145.99	\$1,092,795.94	\$1,295,258.70
Secure detention transportation	\$18,100.77	\$6,029.82	\$25,727.81
Nonsecure detention	\$174,583.81	\$146,851.47	\$137,860.25
Electronic monitoring	\$38,393.80	\$58,171.98	\$57,903.00
Local Funds	\$407,867.78	\$600,668.74	\$717,721.01
State Funds	\$514,356.59	\$703,180.47	\$799,028.29
Grand Total	\$922,224.37	\$1,303,849.21	\$1,516,749.30

Source: Summary of statewide expenditures, Montana Board of Crime Control, Received September 13, 1995. Regional Juvenile Budget and Expenditures, May 28, 1996.

Statistics

The Juvenile Probation Information System (JPIS) was started in the early 1970s. During 1993, a new case management and data collection program, which updated the JPIS, was provided to all juvenile probation offices throughout Montana. The data from the JPIS system as published in the 1993, 1994, and 1995 Crime In Montana annual reports on juvenile offenses is presented below.

The statistics for 1993, 1994, and 1995 are not directly comparable. The discrepancies can be attributed to many factors:

(a) there is some increase in actual offenses, but the actual amount is unknown;

(b) 1993 was the first year for which MBCC had 100% of the counties reporting, but not 100% reporting by each county. In 1994, 100% of the counties were reporting and there was closer to 100% reporting by each county. This reporting system is as dynamic as the Youth Court system is, and counties have the capacity to delete, add, or amend existing records at any time, which can alter numbers from year to year and make accurate comparisons impossible.

(c) 1995 data became available in September of 1996. In 1995 the reporting base continued to improve, which partially contributes to the increase in numbers.

TABLE 4
Summary of Juvenile Offenses
extracted from Crime In Montana (CIM)
1993, 1994, and 1995 Annual Reports

REASON FOR REFERRAL	# OF OFFENSES		
	<u>1993</u>	<u>1994</u>	<u>1995</u>
<i>Status Offenses</i>			
Liquor Violations	541	1233	1036
Ungovernable, truancy	1684	1499	1633
Runaway	582	965	964
Total Status	2807	3697	3633
<i>Crimes Against Persons</i>			
Homicide	4	9	5
Rape	22	33	28
Robbery	25	29	32
Aggravated Assault	58	107	153
Simple Assault	583	1118	1116
Other	892	845	990
Total Persons	1584	2141	2324
<i>Crimes Against Property</i>			
Burglary	359	460	438
Larceny	2523	4330	4045
Motor Vehicle Theft	164	*	*
Arson and Vandalism	891	1339	1458
Trespassing	376	645	973
Other Property Crimes	105	*	175
Total Property	4418	6774	7089
<i>Offenses Against Public Administration</i>			
False Reports	27	*	*
Bribery	*	1	*
Obstructing, resisting	107	770	493
Other	130	51	505
Total Public Administration	264	822	998
<i>Offenses Against the Public Order</i>			
Weapons	40	86	148
Sex Offenses	108	*	*
Driving Under the Influence	2	*	*
Disorderly Conduct	446	891	1039
Traffic Crimes	24	*	*
Other	495	55	101
Total Public Order	1115	1032	1288
<i>Drug Offenses</i>			
Drug Offenses	226	495	567
Drug Paraphernalia	*	331	388
Total Drug	226	826	955
<i>Other</i>			
Traffic, City, Conspiracy, etc.	*	1521	1318
Total	*	1521	1318
GRAND TOTAL	10414	16813	17605

* - Due to changes in recording procedures, some categories were eliminated and those offenders grouped in other categories.

TABLE 5
PERCENTAGES OF REFERRALS BY TYPE

REASON FOR REFERRAL	<u>1993</u>	<u>1994</u>	<u>1995</u>
Status Offenses	24.7	22.0	20.6
Delinquent Offenses	75.3	78.0	79.4

The Number of Detentions and Their Trend

The number of youth sent to detention in 1995 was 964, compared to 714 total detentions in 1994. During 1995, 363 youth (37.7%) were detained more than once. A similar percentage of youth were detained more than once during 1994, which was 241 youth (33.8%).²

Disposition of Juvenile Offenders

About 70% of the youth appearing before Youth Court are first-time offenders. Almost half of the delinquent referrals are handled informally (i.e., without a petition filed in Youth Court). Over 12% of these cases resulted in a warning, and 21.2% resulted in probation. In 6.7% of all referrals, the youth had to make restitution.³

Department of Corrections

Facilities

Secure correctional facilities (postadjudication):

Pine Hills School, state-operated, 85 beds, boys, Miles City.

Montana Youth Alternatives, public-private partnership, boys and girls, Helena/Boulder. The four-phase program began operation in June of 1995. As of May 1, 1996, 119 youth had been admitted to the Orientation Program. Of those, 83 youth have completed the Wilderness Phase, 53 have proceeded on to and completed the residential phase, and 49 have made it to the fourth phase and have entered aftercare.⁴

Transition centers (postadjudication secure confinement):

Youth Evaluation Program, Great Falls, 7 beds, boys
Billings Transitional Center, Billings, 7 beds, boys

TABLE 6
JUVENILE FACILITIES

Population--Average Daily Population at Fiscal Yearend (FYE)

	<u>Actual FYE94</u>	<u>Actual FYE95</u>	<u>Proj FYE96</u>	<u>Proj FYE 97</u>
Pine Hills	78	84	85	85
Montana Youth Alternatives	0	0	56	64
Mountain View School	26	18	0	0
Transition Centers	12	15	19	19
Total	116	117	160	199
Projection			190	207

Source: Draft Corrections Population Management Plan, May 23, 1996.

TABLE 7
JUVENILE COMMUNITY SERVICES

Unduplicated Clients at Fiscal Yearend (FYE)

	<u>Actual FYE94</u>	<u>Actual FYE95</u>	<u>Proj FYE96</u>
Clothing Allowance	48	60	36
In-State			
Family Home	121	129	100
Group Home	202	203	214
Shelter Care	550	573	566
In-State Residential	97	122	152
Out-of-State			
Residential	62	81	133
Support Services	6	12	0
Supplemental Services	34	89	54
Total Unduplicated	866	930	
Projected			1,021

Source: Draft Corrections Population Management Plan, May 23, 1996.

Parole or Aftercare

Parole or aftercare is the transition from a secure correctional facility back to community life. Some youth are placed in one of the two transition centers, others are supervised by a juvenile parole or aftercare officer. Aftercare was the traditional term, but the term parole is becoming more popular. Juvenile parole or aftercare is the responsibility of the Department of Corrections. There are 11 juvenile parole or aftercare officers in the state.

Female Juvenile Offenders - July 1, 1995 through June 1, 1996⁵

During this time period, the total number of paid services, such as counseling, clothing purchases, transportation, and residential placements, for female juvenile offenders committed to the Department of Corrections for placement was 397. Of the 397 paid services, 42 were related to travel, clothing, mental health counseling, or other supplemental services; 245 female juvenile offenders were placed in shelter care.

On July 1, 1995, there were 51 female offenders in in-state, residential programs from the prior fiscal year (does not include all placements paid for through Medicaid). As of July 11, 1996, 23 of the 51 female offenders remain in in-state placement. During this time period, 129 new, in-state, residential placements (may include those decertified by Medicaid) were made.

From July 1, 1995, to June 1, 1996, 180 female juvenile offender placements were paid for by the Department of Corrections, including the Montana Youth Alternatives (MYA) program. The number of female juvenile offenders referred to Phase I (orientation) of MYA is 38; 25 of these female offenders entered Phase II (wilderness), 2 went directly to Phase III (residential), 4 were placed in long-term secure care, 2 were returned home, 1 was placed in shelter care, 1 was placed in a group home, 1 was placed for evaluation, and 2 were returned to Youth Court for further disposition. The number of female juvenile offender placements in in-state, residential treatment programs (Shodair, Rivendell, Yellowstone) was 17, and the balance of 125 female offenders were placed in foster care, group care, and therapeutic care facilities.

On July 1, 1995, there were 15 female juvenile offenders in out-of-state, residential programs: 8 remain in placement out-of-state; 7 are no longer out-of-state, and 2 are in in-state, residential placement.

During this time period, there have been 37 unduplicated female juvenile offenders served in out-of-state residential programs; 14 of the 37 were identified as "on parole" status (released from Mountain View School) at the time of placement or who would have been on parole status (secure correctional facility release). Twelve of the 37 total female offenders who have been in out-of-state placements this year were placed as parole cases since July 1, 1995.

Twelve of the 15 female offenders in placement at the beginning of the year had been removed from or placed as an alternative to return to Mountain View School because their mental health needs could not be met in a secure correctional facility.

The Department of Corrections approved 22 out-of-state placements in the past year: 4 are no longer out of state, and 18 remain in placement out of state. Ten of the 22 total female offenders placed out of state were youth who were referred through probation primarily for mental health and social service issues that could not be served in a traditional correctional facility or who had misdemeanor and status offense histories.

The total number of female offenders currently in out-of-state facilities from the prior year plus current placements is 36; 11 of which have been returned from out of state to Montana during this time period.

Budget information⁶

The Department of Corrections (DOC) provides diagnosis, care, education, and rehabilitation for juveniles between 10 and 21 years of age who have been committed to the DOC by the courts.

The DOC juvenile services (former Juvenile Corrections Division) are supported by state general fund money, state special revenue, and federal funds. State special revenue for these services is interest and income from school trust land, private and parental contributions, canteen funds, and alcohol beverage taxes. Federal funds include: reimbursements from the Office of Public Instruction for Chapter 1 and 2 programs and school foods and social services block grant funds.

The Juvenile Corrections Division funds were transferred to the Department of Corrections by the 1995 Legislature. The 1995 Legislature also approved an

executive proposal to restructure the Mountain View School program from a campus-based facility to a wilderness program called the Montana Youth Alternatives (MYA) program.

Since the creation of the Department of Family Services (DFS) in 1987, payments for youth placed in foster care services by courts and probation officers have been paid from the foster care budget. The 1995 Legislature made separate appropriations for juvenile correction and abuse/neglect foster care benefits for the 1997 biennium. The allocation of foster care benefits between juvenile corrections and foster care was based on fiscal year 1994 expenditures. Youth Court placements accounted for 3.2% (\$0.5 million) and probation placements accounted for 19.1% (\$3.1 million) of the foster care benefit expenditures.

For the 1997 biennium, the Legislature appropriated \$1.6 million in funding for the MYA program, with an understanding that the program eliminated 23.42 FTE and included \$1.6 million of federal funds over the biennium. The proposal that eliminated Mountain View School did not change total state spending but was to result in a net general fund reduction of \$344,000 over the biennium.

In June of 1996, the DOC projected a shortfall of \$4.78 million for juvenile corrections in the categories of community services, MYA contract (private), MYA orientation (state-operated), sex offenders, and secure care females. The DOC requested a supplemental budget transfer of \$3.3 million. A combination of reasons was cited including a lack of control over placement decisions during the transition from DFS to DOC, a lack of parental contributions being collected for the MYA program, and a lack of determination of eligibility for the Managing Resources Montana (MRM) programs. The DOC identified three reasons for the shortfall: (1) an increase in the number of youth offenders; (2) an increase in the cost of providing for secure care for juvenile female offenders; and (3) an increase in treatment of male offenders.⁷

Montana Youth Alternatives

The shortfalls in this program were experienced in both the orientation phase of the program, operated by the state, and the final three phases, which are contracted. Since this program was new this biennium, the Legislative Fiscal Analyst reported that the former Department of Family Services failed to accurately assess the costs of the actual program in its original proposal. The

Department of Corrections was faced with implementing a program that it did not propose and that appears to be serving fewer youth at higher costs in the orientation phase and serving fewer youth in the final three phases.

Community Services

The average length of stay in custody of youth in juvenile corrections has increased from 110 days in 1994 to 186 days in fiscal year 1996 (60% increase). The DOC was not able to identify why this was happening.

Special Populations

Secure Care Females: Between July 1, 1995, and May 16, 1996, 25 females had been placed in secure care facilities. The DFS staff had projected total expenditures of \$706,953 at an average cost of \$28,278 per secure care placement for fiscal year 1996. During the 1995 Legislature's appropriations hearings, DFS testified that this population would average between 4 and 10 girls annually and that they could absorb the costs. The Legislature appropriated \$100,000 to the general fund to cover the costs of placing secure care girls in non-state operated facilities. The DOC is not absorbing any costs and has requested a supplemental appropriation for these costs.

Sex Offenders: According to DOC, 63 sex offender placements had been made this fiscal year at a cost projected to be \$1,700,217, at an average cost per placement of \$26,988. In the 1995 Session, the Legislature added an additional \$300,000 to the \$100,000 cited above for "secure care girls and treatment programs for juvenile sex offenders". This appropriation was in addition to expenditures that had been included in the base that had been incurred for sex offender treatment by DFS (none of the base amount appropriated to DFS/Department of Public Health and Human Services apparently transferred to DOC). The Legislature had little or no data before them when making these decisions and added the following language to HB 2 referencing the sex offender/secure care girls appropriation:

The Department (of Corrections) shall provide to the 55th Legislature the following information about expenditures funded from item 3a [the Sex Offender/Secure Care Female appropriation]: number of children served, the average cost per

child, services provided, the treatment outcomes, and the current placement of children served.

Sex offender demographics were supplied by the Montana Sex Offender Treatment Association. Between July 1, 1995, and January 1, 1996, 47 new juvenile sex offenders were evaluated and 15 more for which they could not obtain data were identified.

1997 Legislative Proposals for the FY 1998-1999 Biennium

16-bed secure care facility for female offenders age 12 to 19 at MYA-Boulder Transition center for female youth, 7 bed

Expand Billings transition center for male youth from 7 beds to 12 beds

Additional 7-bed, male, youth transition center in western Montana for FY 1999

5 additional juvenile parole staff to administer placement funding

13 additional probation and parole officers - 5 as juvenile probation officers

Appropriation to be used for 3.5 FTE for transportation officers (1.5 new + 0.5 existing for 2 in Miles City plus 2 new in Boulder)

Increase beds at Pine Hills School from 85 to 120 (inclusive of 20-bed sex offender program)

Department of Public Health and Human Services (DPHHS)

Out-of-Home Care Resources

Licensed foster care homes

Group homes

Residential care/treatment: private, public

Therapeutic foster care homes

Partnership programs

Family-based service programs

Daycare

Therapeutic group homes

Crisis nursery

Mental Health Resources

Managing Resources Montana (MRM) services may include outpatient, individual, family, and group therapy; adolescent, elementary, and middle school

day treatment services; case management services; therapeutic foster care; family-based services; individual, family, and group therapy in the school setting.

Five Regional Community Mental Health Centers

Clinics in 37 communities

Day treatment:

Children: Kalispell

Preschool: Early Start, Helena; Blossom*, Butte

Middle School: Bozeman

Adolescent: High Plains*, Great Falls; Spring Creek*, Billings; Centerline*, Bozeman; Crossroads*, Butte; Southwest Adolescent Treatment Program, Helena (* Operated through public schools)

Residential treatment:

Girls: Sinopah House, Kalispell

Therapeutic Foster Care: Great Falls

Other

7 Inpatient Psychiatric Services

8 Indian Health Service Units

Home on the Range, Glendive

Youth Dynamics, Inc., Billings, Helena

Yellowstone Treatment Center, Billings

Rivendell, Butte

Shodair, Helena

Chemical Dependency Resources

There are 29 state-approved chemical dependency treatment programs that operate 62 sites for services including outpatient, inpatient, intensive outpatient, and day treatment, transitional living, and ACT educational courses. Many outpatient programs serve adolescents.

The number of inpatient programs from which the state is able to use state funds to purchase services is limited because earmarked and federal block grant funds cannot be used for private facilities. The DPHHS Mental and Addictive

Disorders Division contracts with Rimrock Foundation, Billings, and with Northern Montana Chemical Dependency Program, Inc., Havre, for limited adolescent inpatient treatment.

Elkhorn Mountain Transition Living Facility for Young Men (Boyd Andrews) has a seven-bed intermediate care program for adolescent boys.

The Eastern, Western, and Southcentral Region Mental Health Centers also are state-approved chemical dependency programs.

Other inpatient treatment programs include:

Wilderness Treatment Center, Marion

Rocky Mountain Treatment Center, Inc., Great Falls

Blackfeet Chemical Dependency Program, Browning

Montana Deaconess Medical Center, Great Falls

Pathways Treatment Center, Kalispell

St. Patrick Hospital, Missoula

Chemical Dependency Funding

The Legislature appropriated \$160,000 for fiscal year 1996-97 to the Department of Public Health and Human Services, Child and Family Services Division, and to the Department of Corrections, Juvenile Corrections, and granted spending authority for \$60,000 in federal substance abuse block grant funds to the Department of Public Health and Human Services, Mental and Addictive Disorders Division.

Budget Information⁸

The information for DPHHS is extracted from the *1997 Legislative Fiscal Report* that is compiled after each session and reports the appropriations by the Legislature for the biennium. The 1997 biennium includes the period between July 1, 1995, and July 1, 1997. (The page numbers from the report are included in parentheses.) These appropriations may or may not reflect the actual expenditures by the agencies involved. The Executive Branch has now completed its budget amendment process that moves additional funds from the 1997 fiscal year to cover additional funds expended from fiscal year 1996. Some of that information is reflected earlier in this report.

Foster Care Benefits Allocation (B-40)

The Legislature allocated foster care benefits between abuse/neglect functions and juvenile corrections accounting for a biennial reduction (of the DPHHS budget) of \$7.8 million in general fund money. All foster care benefits were included in the Program Management Division of DPHHS, and Juvenile Corrections was transferred to Department of Corrections.

Overview of benefits and grants (B 98-100)

Foster care benefits - Foster care benefits are the single largest benefit administered by the Program Management Division and account for the majority of general fund budgeted for benefits and grants. Foster care benefits include family foster care, group homes, shelter care, and non-Medicaid residential treatment. Foster care services are funded with general fund money, county funds, third-party reimbursements, and federal funds. County contributions are limited to the lesser of actual expenditures or the amount expended by the county in fiscal year 1987. Abuse/neglect foster care benefits increase about \$2 million in total funds (\$0.9 million general fund) over the biennium. The increase is due to caseload growth and a 1.5 percent provider rate increase.

Residential Psychiatric Treatment - Residential psychiatric treatment is a Medicaid benefit funded about 30% from the general fund and about 70% from federal funds. The Legislature transferred residential psychiatric treatment to the Mental Health Program for the 1997 biennium.

Therapeutic Group Homes (TGH) - This Medicaid benefit was authorized by the 1993 Legislature as a way to lessen the state cost of 100% general fund group home care and to provide a level of community-based care that is less restrictive than residential psychiatric care but more intensive than group care. The 30% general fund match for TGH is budgeted in the Program Management Division, while the federal Medicaid match is budgeted in the Medicaid Services Division.

The 1997 biennium TGH appropriations are more than double the base expenditures of fiscal year 1994-95 due to an expansion in the number of group homes. In fiscal year 1994, there were 68 TGH beds, and in fiscal year 1995, the number nearly doubled to 127. Unlike residential psychiatric care, DPHHS controls the number of TGH beds.

The DPHHS expanded TGH care by contracting for specialized care for a number of children placed in residential psychiatric care who had lost Medicaid eligibility because they did not exhibit the level of improvement necessary for continued Medicaid reimbursement. Since the criteria for maintaining Medicaid eligibility are less restrictive for TGH care than for residential psychiatric care, these children can continue to be served at a lower cost to the general fund.

The Legislature appropriated an additional \$1.7 million in general fund money to DPHHS over the biennium for the Medicaid match for TGH care. The former DFS had expanded the number of TGH beds in order to bring children placed out of state back to Montana and in order to retain Medicaid funding for children who lost Medicaid eligibility for residential psychiatric care. The DPHHS is planning to include children's services in its mental health managed care plan, so TGH services and appropriations will be included in state funding pool for the managed care contract.(B-104)

Chemical Dependency - This benefit funds chemical dependency treatment for eligible indigent youth. To be eligible, a child must: (1) meet Aid to Families with Dependent Children income standards; (2) be adjudicated delinquent, in need of supervision, or in need of care; and (3) be in need of a program approved by DPHHS. The general fund supports the entire cost of this benefit.

New proposals FY 1996-97 (B-65-67)

Juvenile Sex Offender Program The Legislature added \$1.8 million (\$921,877 in FY96 and \$890,323 in FY97) in federal Medicaid authority to match the general fund appropriated to DOC for treatment of juvenile sex offenders. The Legislature added federal matching funds if treatment can be provided in therapeutic group homes.

Mental Health Division includes community-based services provided primarily in partnership with private, nonprofit mental health centers in five mental health regions. The MRM Program, formed in response to the 1993 directive that state agencies develop and coordinate services for seriously emotionally disturbed (SED) youth, is operated through the Mental Health Division. The MRM 1997 biennial appropriation was \$16.1 million in general fund money for residential treatment services, community services for SED youth, and utilization review. In addition, \$6 million are general MRM funds to spend as determined to be necessary.

Office of Public Instruction

Currently, there are 473 school districts statewide. Each school district has special education services or has made provisions for special education services through means such as a cooperative of more than one school or school district. Special education funding is administered through the Office of Public Instruction (OPI), which funds special education services for youth in-state and for education services when the youth are placed out of state.

Special education: The percentage of special education children has remained about 11% of total enrollment for several years. The total unduplicated count for 1995-96 was 18,303 of an estimated 166,000 total enrollment. The expenditures per pupil for special education allowable costs were projected to be \$2,812 per student based on a 2.8% average growth from FY89 through FY94.⁹

The OPI is projecting fiscal year 1996 expenditures of \$944,284 compared to fiscal year 1995 costs of \$355,000, a 263% increase in one year. The OPI data estimate costs to be equivalent to 14,684 out-of-state treatment days in fiscal year 1996 compared to 6,291 in fiscal year 1995 and 8,023 in fiscal year 1994. In addition, the average daily cost of special education increased by 25% over the last three fiscal years. Since the expenditures for these educational costs are from the state's special education budget, increases in the education costs for out-of-state placements result in a decrease in special education funds distributed to school districts.

Medicaid reimbursement is a contributing factor to the increases in the OPI special education costs. Medicaid will cover educational costs for a Medicaid-eligible child placed in a Medicaid-eligible residential psychiatric facility. So if all the children placed in out-of-state facilities were Medicaid-eligible and were placed in Medicaid-eligible facilities, the OPI would owe no additional funds for education costs. Legislative Fiscal Division staff have been unable to determine whether: (1) probation and parole officers routinely determine Medicaid eligibility for all juvenile corrections offenders; (2) utilization review for Medicaid services has unnecessarily tightened or restricted Medicaid reimbursement over the last two or three years; and (3) placements in out-of-state facilities and residential psychiatric facilities are medically necessary.¹⁰

Public Schools Day Treatment: Spring Creek Center, Billings; Bitterroot Valley Cooperative (multisite), Ravalli County; Centerline, Bozeman; Crossroads (two sites), Butte; New Pathways, Glendive; High Plains Adolescent Day Treatment, Great Falls; Southwest Adolescent Treatment Program, Helena; Flathead Valley Day Treatment, Kalispell; Custer County Youth Center, Miles City; Children's Day Treatment (four sites), Missoula.

Alternative Schools: Project for Alternative Learning/South West Adolescent Treatment, Helena; LASER, Kalispell; Sentinel High School Alternative Center (Grades 9/10), Missoula; District Alternative Learning Center (Grades 11/12), Missoula; Project 71, Livingston; Eagle Alternative High School, Columbia Falls; Bridger Alternative Education Program, Bozeman; Two Eagle River School, Pablo; Butte Alternative School, Butte; Havre Alternative School, Havre; Largent Education Center, Great Falls; Adult and Alternative Education, Lincoln Center, Billings; Pine Hills School, Miles City; Stay in School Program, Browning Schools, Browning.

~ ~ ~

1. Office of the Legislative Fiscal Analyst, Legislative Fiscal Report, 1997 Biennium, June 1995: pp. D-1 through 5.

2. Montana Board of Crime Control, Crime In Montana: 1995 Annual Report, August, 1996.

3. Montana Board of Crime Control, Crime In Montana: 1995 Annual Report, August, 1996.

4. Culver, Skip, 1996 Department of Corrections Juvenile Corrections Supplemental, Legislative Fiscal Division.

5. Memo prepared by John Paradis, Juvenile Placement, Community Corrections Division, Department of Corrections, dated July 11, 1996.

6. Office of the Legislative Fiscal Analyst, Legislative Fiscal Report, 1997 Biennium, June 1995: pp. D-1 through 5.

7. Culver, Skip, 1996 Department of Corrections Juvenile Corrections Supplemental, Legislative Fiscal Division.

8. Office of the Legislative Fiscal Analyst, Legislative Fiscal Report, 1997 Biennium, June 1995.

9. Office of Public Instruction, 2/12/96 printout

10. Culver, Skip, 1996 Department of Corrections Juvenile Corrections Supplemental, Legislative Fiscal Division.

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APPENDIX B STAFF REPORTS

Baker, Elizabeth, Susan Byorth Fox, Valencia Lane. Montana Youth Court Act: 1995 Overview, a compilation of the Title 41, chapter 5 with 1995 session changes and an update of an overview.

Susan Byorth Fox, Legislative Research Analyst, Montana Legislative Services Division:

Draft Study Outline, June 1995.

Proposed Study Plan, July 1995. Revised version, December 1995.

Successful Programs in Juvenile Justice in the United States, October 1995.

Wyoming and OJJDP, October 1995.

Status Offenders, February 1996.

Information-Sharing and Confidentiality Provisions Regarding Information on Youth, March 1996.

State Automated Systems that Include Information on Youth, March 1996.

Effectiveness, Efficiency, and Privatization Issues in Juvenile Correctional and Detention Facilities, July 1996.

APPENDIX C
DRAFT LEGISLATION

____ BILL NO. ____

1 INTRODUCED BY _____
 2
 3 BY REQUEST OF THE JUVENILE JUSTICE AND JUVENILE MENTAL HEALTH STUDY COMMISSION
 4
 5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING AND RECODIFYING THE MONTANA
 6 YOUTH COURT ACT; CLARIFYING THAT SHORT-TERM DETENTION OF YOUTH, FOR UP TO 96 HOURS,
 7 EXCLUDES WEEKENDS AND LEGAL HOLIDAYS; AMENDING SECTIONS 7-6-501, 7-32-2244, 41-5-103,
 8 41-5-206, 41-5-301, 41-5-303, 41-5-305, 41-5-306, 41-5-307, 41-5-311, 41-5-403, 41-5-502, 41-5-521,
 9 41-5-522, 41-5-523, 41-5-525, 41-5-527, 41-5-530, 41-5-1004, 41-5-1104, 46-24-207, 52-5-129, AND
 10 53-9-107, MCA; REPEALING SECTIONS 41-5-310 AND 41-5-312, MCA; AND PROVIDING AN
 11 APPLICABILITY DATE."

12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13 Section 1. Section 7-6-501, MCA, is amended to read:

14
 15 "7-6-501. Definitions. As used in 7-6-502 and this section, unless the context requires otherwise,
 16 the following definitions apply:

17 (1) "Detention" means the holding or temporary placement of a youth in a facility other than the
 18 youth's own home for the purpose of ensuring the continued custody of the youth at any time after the
 19 youth is taken into custody and before final disposition of his case.

20 (2) "Juvenile detention program" means services to provide for the lawful detention or shelter care
 21 of youth. The term includes:

22 (a) youth evaluations ordered by the court under 41-5-523, section 29J, or section 38J; and
 23 (b) programs for the transportation of youth to appropriate detention facilities or shelter care
 24 facilities.

25 (3) "Local government" has the same meaning as provided in 7-12-1103.

26 (4) "Shelter care" has the same meaning as provided in 41-5-103.

27 (5) "Youth" means an individual who is less than 18 years of age who is alleged to be a delinquent
 28 youth or youth in need of supervision as those terms are defined in 41-5-103."

29
 30

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1 Section 2. Section 7-32-2244, MCA, is amended to read:

2 "7-32-2244. Detention of juveniles. Juveniles may be held in a detention center only in accordance
 3 with ~~41-5-301 through 41-5-307, 41-5-308, and 41-5-311~~ Title 41, chapter 5, part 3."

4

5 Section 3. Section 41-5-103, MCA, is amended to read:

6 "41-5-103. Definitions. As used in the Montana Youth Court Act, unless the context requires
 7 otherwise, the following definitions apply:

8 (1) "Adult" means an individual who is 18 years of age or older.

9 (2) "Agency" means any entity of state or local government authorized by law to be responsible
 10 for the care or rehabilitation of youth.

11 (3) "Commit" means to transfer to legal custody.

12 (4) "Correctional facility" means a public or private residential facility used for the placement of
 13 delinquent youth or individuals convicted of criminal offenses.

14 (5) "Court", when used without further qualification, means the youth court of the district court.

15 (6) "Custodian" means a person, other than a parent or guardian, to whom legal custody of the
 16 youth has been given but does not include a person who has only physical custody.

17 (7) "Delinquent youth" means a youth:

18 (a) who has committed an offense that, if committed by an adult, would constitute a criminal
 19 offense; or

20 (b) who, having been placed on probation as a delinquent youth or a youth in need of supervision,
 21 violates any condition of probation.

22 (8) "Department" means the department of corrections provided for in 2-15-2301.

23 (9) "Detention" means the holding or temporary placement of a youth in the youth's home under
 24 home arrest or in a facility other than the youth's own home for the purpose of ensuring the continued
 25 custody of the youth at any time after the youth is taken into custody and before final disposition of the
 26 youth's case.

27 (10) "Detention facility" means a physically restricting facility designed to prevent a youth from
 28 departing at will. The term includes a youth detention facility, short-term detention center, and regional
 29 detention facility.

30 (11) "Final disposition" means the implementation of a court order for the disposition or placement

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1 of a youth as provided in 41-5-523 or section 29.

2 (12) "Foster home" means a private residence licensed by the department of public health and

3 human services for placement of a youth.

4 (13) "Guardianship" means the status created and defined by law between a youth and an adult

5 with reciprocal rights, duties, and responsibilities. "Guardian" means an adult;

6 he who is responsible for a youth and has reciprocal rights, duties, and responsibilities with the

7 youth; and

8 (b) whose status is created and defined by law.

9 (14) "Holdover" means a room, office, building, or other place approved by the board of crime

10 control for the temporary detention and supervision of youth in a physically unrestricting setting for a period

11 not to exceed 24 hours while the youth is awaiting a probable cause hearing, release, or transfer to an

12 appropriate detention or shelter care facility. The term does not include a jail.

13 (15) "Jail" means a facility used for the confinement of adults accused or convicted of criminal

14 offenses. The term includes a lockup or other facility used primarily for the temporary confinement of adults

15 after arrest.

16 (16) "Judge", when used without further qualification, means the judge of the youth court.

17 (17) (a) "Legal custody" means the legal status created by order of a court of competent jurisdiction

18 that gives a person the right and duty to:

19 (i) have physical custody of the youth;

20 (ii) determine with whom the youth shall live and for what period;

21 (iii) protect, train, and discipline the youth; and

22 (iv) provide the youth with food, shelter, education, and ordinary medical care.

23 (b) An individual granted legal custody of a youth shall personally exercise the individual's rights

24 and duties as guardian unless otherwise authorized by the court entering the order.

25 (18) "Mentally ill" means suffering from a mental disorder that has not resulted in self-inflicted

26 injury or injury to others or the imminent threat of injury but that;

27 (a) has resulted in behavior that creates serious difficulty in protecting the person's life or health

28 even with the available assistance of family, friends, or others;

29 (b) is treatable with a reasonable prospect of success;

30 (c) has deprived the person of the capacity to make an informed decision concerning treatment;

1 (d) has resulted in the person's refusing or being unable to consent to voluntary admission for

2 treatment; and

3 (e) poses a significant risk of the person's becoming seriously mentally ill or will, if untreated,

4 predictably result in further serious deterioration in the mental condition of the person. Predictability may

5 be established by the patient's medical history.

6 ~~(49)(19)~~ "Necessary parties" includes the youth, and the youth's parents, guardian, custodian, or

7 spouse.

8 ~~(49)(20)~~ "Parent" means the natural or adoptive parent but does not include a person whose

9 parental rights have been judicially terminated, nor does it include the putative father of an illegitimate youth

10 unless the putative father's paternity is established by an adjudication or by other clear and convincing

11 proof.

12 ~~(20)(21)~~ "Probable cause hearing" means the hearing provided for in 41-5-303 section 12.

13 ~~(21)(22)~~ "Regional detention facility" means a youth detention facility established and maintained

14 by two or more counties, as authorized in 41-5-811.

15 ~~(22)(23)~~ "Restitution" means payments in cash to the victim or with services to the victim or the

16 general community when these payments are made pursuant to an informal adjustment, consent decree,

17 or other youth court order.

18 ~~(23)(24)~~ "Secure detention facility" means any public or private facility that:

19 (a) is used for the temporary placement of youth or individuals accused or convicted of criminal

20 offenses; and

21 (b) is designed to physically restrict the movements and activities of youth or other individuals held

22 in lawful custody of the facility.

23 ~~(24)(25)~~ "Serious juvenile offender" means a youth who has committed an offense that would be

24 considered a felony offense if committed by an adult and that is an offense against a person, an offense

25 against property, or an offense involving dangerous drugs.

26 ~~(25)(26)~~ "Shelter care" means the temporary substitute care of youth in physically unrestricting

27 facilities.

28 ~~(26)(27)~~ "Shelter care facility" means a facility used for the shelter care of youth. The term is

29 limited to the facilities enumerated in 41-5-306(4) section 20.

30 ~~(27)(28)~~ "Short-term detention center" means a detention facility licensed by the department for

1 the temporary placement or care of youth, for a period not to exceed 98 hours ~~excluding weekends and~~
 2 ~~legal holidays~~, pending a probable cause hearing, release, or transfer of the youth to an appropriate
 3 detention facility or shelter care facility.
 4 ~~(24)(29)~~ "State youth correctional facility" means a residential facility used for the placement and
 5 rehabilitation of delinquent youth, such as the Pine Hills school in Miles City ~~and the Mountain View school~~
 6 ~~in Helena~~.
 7 ~~(24)(30)~~ "Substitute care" means full-time care of youth in a residential setting for the purpose of
 8 providing food, shelter, security and safety, guidance, direction, and, if necessary, treatment to youth who
 9 are removed from or are without the care and supervision of their parents or guardian.
 10 ~~(24)(31)~~ "Youth" means an individual who is less than 18 years of age without regard to sex or
 11 emancipation.
 12 ~~(24)(32)~~ "Youth court" means the court established pursuant to this chapter to hear all proceedings
 13 in which a youth is alleged to be a delinquent youth, a youth in need of supervision, or a youth in need of
 14 care and includes the youth court judge and probation officers.
 15 ~~(24)(33)~~ "Youth detention facility" means a secure detention facility licensed by the department for
 16 the temporary substitute care of youth that:
 17 (a) is operated, administered, and staffed separately and independently of a jail; and
 18 (b) is used exclusively for the lawful detention of alleged or adjudicated delinquent youth.
 19 ~~(24)(34)~~ "Youth in need of care" has the meaning provided for in 41-3-102.
 20 ~~(24)(35)~~ "Youth in need of supervision" means a youth who commits an offense prohibited by law
 21 that, if committed by an adult, would not constitute a criminal offense, including but not limited to a youth
 22 who:
 23 (a) violates any Montana municipal or state law regarding use of alcoholic beverages by minors;
 24 (b) continues to exhibit behavior beyond the control of the youth's parents, foster parents, physical
 25 custodian, or guardian despite the attempt of the youth's parents, foster parents, physical custodian, or
 26 guardian to exert all reasonable efforts to mediate, resolve, or control the youth's behavior; or
 27 (c) has committed any of the acts of a delinquent youth but whom the youth court, in its
 28 discretion, chooses to regard as a youth in need of supervision."

30 Section 4. Section 41-5-208, MCA, is amended to read:

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1 "41-5-208. Transfer to district court after prosecution -- disposition in district court -- limitation
 2 on jurisdiction. (1) To ensure continued compliance with the court's disposition under 41-5-523 ~~section~~
 3 ~~29~~, at any time after a youth reaches 18 years of age but before the youth reaches 21 years of age, the
 4 youth court judge may transfer jurisdiction to district court and order the transfer of supervisory
 5 responsibility and the youth's case files to the department.
 6 (2) If a youth whose case has been transferred to district court under this section violates a
 7 disposition imposed under 41-5-523 ~~section 29~~, the district court may impose conditions as provided
 8 under 48-18-201 through 48-18-203.
 9 (3) If, at the time of transfer, the youth is incarcerated in a state youth correctional facility, the
 10 district court may order that the youth, after reaching 18 years of age:
 11 (a) be incarcerated in a state adult correctional facility, boot camp, or prerelease center; or
 12 (b) be supervised by the department.
 13 (4) The district court's jurisdiction over a case transferred under this section terminates when the
 14 youth reaches 25 years of age."

16 Section 5. Section 41-5-301, MCA, is amended to read:

17 "41-5-301. Preliminary investigation and disposition inquiry -- referral of youth in need of care.
 18 (1) Whenever the court receives information from any agency or person, based upon reasonable grounds,
 19 that a youth is or appears to be a delinquent youth or a youth in need of supervision or, being subject to
 20 a court order or consent order, has violated the terms of an order, a probation officer shall make a
 21 preliminary inquiry into the matter.
 22 (2) ~~The probation officer may:~~
 23 ~~(a) require the presence of any person relevant to the inquiry;~~
 24 ~~(b) request subpoenas from the judge to accomplish this purpose;~~
 25 ~~(c) require investigation of the matter by any law enforcement agency or any other appropriate~~
 26 ~~state or local agency;~~
 27 (3) ~~(2)~~ If the probation officer determines that the facts indicate that the youth is a youth in need
 28 of care, the matter must be immediately referred to the department of public health and human services.
 29 (4) ~~(a)~~ ~~The probation officer in the conduct of the preliminary inquiry shall~~
 30 ~~(i) advise the youth of the youth's rights under this chapter and the constitutions of the state of~~

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1 Montana and the United States;

2 (iii) determine whether the matter is within the jurisdiction of the court;

3 (iii) determine, if the youth is in detention or shelter care, whether detention or shelter care should

4 be continued based upon criteria set forth in 41-5-305;

5 (b) Once relevant information is secured, the probation officer shall:

6 (i) determine whether the interest of the public or the youth requires that further action be taken;

7 (ii) terminate the inquiry upon the determination that no further action be taken; and

8 (iii) release the youth immediately upon the determination that the filing of a petition is not

9 authorized;

10 (5) The probation officer upon determining that further action is required may:

11 (a) provide counseling, refer the youth and the youth's parents to another agency providing

12 appropriate services, or take any other action or make any informal adjustment that does not involve

13 probation or detention;

14 (b) provide for treatment or adjustment involving probation or other disposition authorized under

15 41-5-401 through 41-5-403 if the treatment or adjustment is voluntarily accepted by the youth's parents

16 or guardian and the youth, if the matter is referred immediately to the county attorney for review; and if

17 the probation officer proceeds no further unless authorized by the county attorney or

18 (c) refer the matter to the county attorney for filing a petition charging the youth to be a delinquent

19 youth or a youth in need of supervision;

20 (6) The county attorney may apply to the youth court for permission to file a petition charging a

21 youth to be a delinquent youth or a youth in need of supervision. The application must be supported by

22 evidence that the youth court may require. If it appears that there is probable cause to believe that the

23 allegations of the petition are true, the youth court shall grant leave to file the petition;

24 (7) A petition charging a youth held in detention must be filed within 7 working days from the date

25 the youth was first taken into custody or the petition must be dismissed and the youth released unless good

26 cause is shown to further detain the youth;

27 (8) If a petition is not filed under this section, the complainant and victim, if any, must be informed

28 by the probation officer of the action and the reasons for not filing and must be advised of the right to

29 submit the matter to the county attorney for review. The county attorney upon receiving a request for

30 review, shall consider the facts, consult with the probation officer, and make the final decision as to

1 whether a petition is filed;

2

3 NEW SECTION. Section 6. Preliminary Inquiry – procedure. (1) In conducting a preliminary inquiry

4 under 41-5-301, the probation officer shall:

5 (a) advise the youth of the youth's rights under this chapter and the constitutions of the state of

6 Montana and the United States;

7 (b) determine whether the matter is within the jurisdiction of the court;

8 (c) determine, if the youth is in detention or shelter care, whether detention or shelter care should

9 be continued based upon criteria set forth in 41-5-305 and [section 15].

10 (2) In conducting a preliminary inquiry, the probation officer may:

11 (a) require the presence of any person relevant to the inquiry;

12 (b) request subpoenas from the judge to accomplish this purpose;

13 (c) require investigation of the matter by any law enforcement agency or any other appropriate

14 state or local agency.

15

16 NEW SECTION. Section 7. Preliminary Inquiry -- determinations -- release. Once relevant

17 information is secured after a preliminary inquiry under 41-5-301, the probation officer shall:

18 (1) determine whether the interest of the public or the youth requires that further action be taken;

19 (2) terminate the inquiry upon the determination that no further action be taken; and

20 (3) release the youth immediately upon the determination that the filing of a petition is not

21 authorized.

22

23 NEW SECTION. Section 6. Preliminary Inquiry -- dispositions available to probation officer. Upon

24 determining that further action is required after a preliminary inquiry under 41-5-301, the probation officer

25 may:

26 (1) arrange informal disposition as provided in [section 9]; or

27 (2) refer the matter to the county attorney for filing a petition charging the youth to be a delinquent

28 youth or a youth in need of supervision.

29

30 NEW SECTION. Section 9. Informal disposition. After a preliminary inquiry under 41-5-301, the

1 probation officer upon determining that further action is required and that referral to the county attorney
 2 is not required may:

3 (1) provide counseling, refer the youth and the youth's parents to another agency providing
 4 appropriate services, or take any other action or make any informal adjustment that does not involve
 5 probation or detention; or

6 (2) provide for treatment or adjustment involving probation or other disposition authorized under
 7 41-5-401 through 41-5-403 if the treatment or adjustment is voluntarily accepted by the youth's parents
 8 or guardian and the youth, if the matter is referred immediately to the county attorney for review, and if
 9 the probation officer proceeds no further unless authorized by the county attorney.

10
 11 NEW SECTION. Section 10. Petition -- county attorney -- procedure -- release from custody. (1)
 12 The county attorney may apply to the youth court for permission to file a petition charging a youth to be
 13 a delinquent youth or a youth in need of supervision. The application must be supported by evidence that
 14 the youth court may require. If it appears that there is probable cause to believe that the allegations of the
 15 petition are true, the youth court shall grant leave to file the petition.

16 (2) A petition charging a youth held in detention must be filed within 7 working days from the date
 17 the youth was first taken into custody or the petition must be dismissed and the youth released unless good
 18 cause is shown to further detain the youth.

19 (3) If a petition is not filed under this section, the complainant and victim, if any, must be informed
 20 by the probation officer of the action and the reasons for not filing and must be advised of the right to
 21 submit the matter to the county attorney for review. The county attorney, upon receiving a request for
 22 review, shall consider the facts, consult with the probation officer, and make the final decision as to
 23 whether a petition is filed.

24
 25 Section 11. Section 41-5-303, MCA, is amended to read:

26 "41-5-303. Rights of youth taken into custody -- questioning -- ~~hearing for probable cause~~ --
 27 ~~detention~~ -- waiver of rights. (1) When a youth is taken into custody for questioning upon a matter that
 28 could result in a petition alleging that the youth is either a delinquent youth or a youth in need of
 29 supervision, the following requirements must be met:

30 (a) The youth must be advised of his the youth's right against self-incrimination and his the youth's

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1 right to counsel.

2 (b) ~~The youth may waive these rights under the following situations:~~

3 (i) ~~when the youth is 16 years of age or older, the youth may make an effective waiver;~~

4 (ii) ~~when the youth is under the age of 16 years and the youth and a parent or guardian agree, they~~
 5 ~~may make an effective waiver; and~~

6 (iii) ~~when the youth is under the age of 16 years and the youth and his parent or guardian do not~~
 7 ~~agree, the youth may make an effective waiver only with advice of counsel.~~

8 (e)(b) The Investigating officer, probation officer, or person assigned to give notice shall
 9 immediately notify the parents, guardian, or legal custodian of the youth that the youth has been taken into
 10 custody, the reasons for taking the youth into custody, and where the youth is being held. If the parents,
 11 guardian, or legal custodian cannot be found through diligent efforts, a close relative or friend chosen by
 12 the youth must be notified.

13 (2) A youth may waive the rights listed in subsection (1) under the following situations:

14 (a) ~~when the youth is 18 years of age or older, the youth may make an effective waiver;~~

15 (b) ~~when the youth is under 18 years of age and the youth and the youth's parent or guardian~~
 16 ~~agree, they may make an effective waiver; or~~

17 (c) ~~when the youth is under 18 years of age and the youth and the youth's parent or guardian do~~
 18 ~~not agree, the youth may make an effective waiver only with advice of counsel.~~

19 (2) ~~Unless a youth has been released, a hearing must be held within 24 hours after the youth is~~
 20 ~~taken into custody, excluding weekends and legal holidays, to determine whether there is probable cause~~
 21 ~~to believe that the youth is a delinquent youth or a youth in need of supervision.~~

22 (3) ~~The probable cause hearing required under subsection (2) may be held by the youth court, a~~
 23 ~~justice of the peace, a municipal or city judge, or a magistrate having jurisdiction in the case as provided~~
 24 ~~in 41-5-203. If the probable cause hearing is held by a justice of the peace, a municipal or city judge, or~~
 25 ~~a magistrate, a record of the hearing must be made by a court reporter or by a tape recording of the~~
 26 ~~hearing.~~

27 (4) ~~At the probable cause hearing, the youth must be informed of his constitutional rights and his~~
 28 ~~rights under this chapter.~~

29 (5) ~~A parent, guardian, or legal custodian of the youth may be held in contempt of court for failing~~
 30 ~~to be present at or to participate in the probable cause hearing unless he:~~

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1 (a) ~~cannot be located through diligent efforts of the investigating peace officer or peace officers;~~
 2 or
 3 (b) ~~is excused by the court for good cause;~~
 4 (6) ~~At the probable cause hearing, a guardian ad litem may be appointed as provided in 41-5-512;~~
 5 (7) ~~If it is determined that there is probable cause to believe the youth is a delinquent youth or is~~
 6 ~~a youth in need of supervision, the court having jurisdiction in the case shall determine whether the youth~~
 7 ~~should be retained in custody. If the court determines that continued custody of the youth is necessary and~~
 8 ~~if the youth meets the criteria in 41-5-305, the youth may be placed in a detention facility or shelter care~~
 9 ~~facility as provided in 41-5-208 but may not be placed in a jail or other facility used for the confinement~~
 10 ~~of adults accused or convicted of criminal offenses.~~
 11 (8) ~~If probable cause is not found or if a probable cause hearing is not held within the time specified~~
 12 ~~in subsection (2), the youth must be immediately released from custody."~~

14 NEW SECTION. Section 12. Custody -- hearing for probable cause. (1) When a youth is taken
 15 into custody for questioning, a hearing to determine whether there is probable cause to believe the youth
 16 is a delinquent youth or a youth in need of supervision must be held within 24 hours, excluding weekends
 17 and legal holidays. A hearing is not required if the youth is released prior to the time of the required
 18 hearing.

19 (2) The probable cause hearing required under subsection (1) may be held by the youth court, a
 20 justice of the peace, a municipal or city judge, or a magistrate having jurisdiction in the case as provided
 21 in 41-5-203. If the probable cause hearing is held by a justice of the peace, a municipal or city judge, or
 22 a magistrate, a record of the hearing must be made by a court reporter or by a tape recording of the
 23 hearing.

24 (3) A probable cause hearing may be conducted by telephone if other means of conducting the
 25 hearing are impractical. All written orders and findings of the court in a hearing conducted by telephone
 26 must bear the name of the judge or magistrate presiding in the case and the hour and date the order or
 27 findings were issued.

29 NEW SECTION. Section 13. Custody -- hearing for probable cause -- procedure. (1) At a probable
 30 cause hearing held pursuant to [section 12], the youth must be informed of the youth's constitutional rights

1 and the youth's rights under this chapter.
 2 (2) A parent, guardian, or custodian of the youth may be held in contempt of court for failing to
 3 be present at or to participate in the probable cause hearing unless the parent, guardian, or custodian:
 4 (a) cannot be located through diligent efforts of the investigating peace officer or peace officers;
 5 or
 6 (b) is excused by the court for good cause.
 7 (3) At the probable cause hearing, a guardian ad litem may be appointed as provided in 41-5-512.

9 NEW SECTION. Section 14. Custody -- hearing for probable cause -- determinations -- detention
 10 -- release. (1) If, at a probable cause hearing held pursuant to [section 12], it is determined that there is
 11 probable cause to believe the youth is a delinquent youth or a youth in need of supervision, the court
 12 having jurisdiction in the case shall determine whether the youth should be retained in custody. If the court
 13 determines that continued custody of the youth is necessary and if the youth meets the criteria in 41-5-305
 14 or [section 18], the youth may be placed in a detention facility or shelter care facility as provided in
 15 [sections 18 through 21] but may not be placed in a jail or other facility used for the confinement of adults
 16 accused or convicted of criminal offenses.

17 (2) If probable cause is not found or if a probable cause hearing is not held within the time specified
 18 in [section 12], the youth must be immediately released from custody.

20 Section 15. Section 41-5-305, MCA, is amended to read:

21 "41-5-305. Criteria for placement of youth in secure detention facilities or shelter care facilities.

22 (1) A youth may not be placed in a secure detention facility unless only if the youth:

23 (a)(1) he has allegedly committed an act that if committed by an adult would constitute a criminal
 24 offense and the alleged offense is one specified in 41-5-208;

25 (a)(2) he is alleged to be a delinquent youth and;

26 (a)(a) he has escaped from a correctional facility or secure detention facility;

27 (a)(b) he has violated a valid court order or an aftercare agreement;

28 (a)(c) he the youth's detention is required to protect persons or property;

29 (a)(d) he the youth has pending court or administrative action or is awaiting a transfer to another
 30 jurisdiction and may abscond or be removed from the jurisdiction of the court;

- (4)(e) there are not adequate assurances that he the youth will appear for court when required; or
- (4)(f) he the youth meets additional criteria for secure detention established by the youth court in the judicial district that has current jurisdiction over him the youth; or
- (4)(3) he has been adjudicated delinquent and is awaiting final disposition of his the youth's case.
- (2) A youth may not be placed in a shelter care facility unless:
- (a) the youth and his family need shelter care to address their problematic situation when it is not possible for the youth to remain at home;
- (b) the youth needs to be protected from physical or emotional harm;
- (c) the youth needs to be deterred or prevented from immediate repetition of his troubling behavior;
- (d) shelter care is necessary to assess the youth and his environment;
- (e) shelter care is necessary to provide adequate time for case planning and disposition; or
- (f) shelter care is necessary to intervene in a crisis situation and provide intensive services or attention that might alleviate the problem and reunite the family."

NEW SECTION. Section 18. Criteria for placement of youth in shelter care facilities. A youth may be placed in a shelter care facility only if:

- (1) the youth and the youth's family need shelter care to address their problematic situation and it is not possible for the youth to remain at home;
- (2) the youth needs to be protected from physical or emotional harm;
- (3) the youth needs to be deterred or prevented from immediate repetition of troubling behavior;
- (4) shelter care is necessary to assess the youth and the youth's environment;
- (5) shelter care is necessary to provide adequate time for case planning and disposition; or
- (6) shelter care is necessary to intervene in a crisis situation and provide intensive services or attention that might alleviate the problem and reunite the family.

Section 17. Section 41-5-306, MCA, is amended to read:

"41-5-306. Place of shelter care or detention. Limitation on placement of youth in need of care.

- (1) After a probable cause hearing provided for in 41-5-303, a youth alleged to be a youth in need of supervision may be placed only:

- (a) in a licensed youth foster home as defined in 41-3-1102;

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- (b) in a facility operated by a licensed child welfare agency;
- (c) in a licensed youth group home as defined in 41-3-1102; or
- (d) under home arrest, either in the youth's own home or in one of the facilities described in subsection (1)(a) through (1)(c), as provided in Title 46, chapter 18, part 10.
- (2) A youth alleged to be a youth in need of care may be placed only in the facilities listed in subsection (1) shelter care, as provided in Section 20, and may not be placed in a jail or other facility intended or used for the confinement of adults accused or convicted of criminal offenses.
- (3) After a probable cause hearing provided for in 41-5-303, a youth alleged to be a delinquent youth may be placed only:
- (a) in the facilities described in subsection (1);
- (b) under home arrest as provided in subsection (1);
- (c) in a short-term detention center;
- (d) in a youth detention facility; or
- (e) in a community youth court program."

NEW SECTION. Section 18. Limitation on placement of youth in need of supervision. (1) After

- a probable cause hearing provided for in Section 12, a youth alleged to be a youth in need of supervision may be placed only in shelter care, as provided in Section 20.

- (2) A youth alleged or found to be a youth in need of supervision may not be placed in a jail, secure detention facility, or correctional facility.

NEW SECTION. Section 19. Limitation on placement of delinquent youth. After a probable cause hearing provided for in Section 12, a youth alleged to be a delinquent youth may be placed only:

- (1) in shelter care, in the facilities described in Section 20;
- (2) under home arrest as provided in Section 20;
- (3) in detention, as provided in Section 21; or
- (4) in a community youth court program.

NEW SECTION. Section 20. Place of shelter care. Placement in shelter care means placement in one of the following:

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- 1 this section.
- 2 (2) A youth who has allegedly committed an offense that it committed by an adult would constitute
- 3 a criminal offense may be temporarily detained in a jail or other adult detention facility for a period not to
- 4 exceed:
- 5 (a) 8 hours, but in no case overnight, for the purpose of identification, processing, or transfer of
- 6 the youth to an appropriate detention facility or shelter care facility; or
- 7 (b) 24 hours, excluding weekends and legal holidays, if the youth is awaiting a probable cause
- 8 hearing pursuant to 41-5-303 Section 12.
- 9 (3) The exception provided for in subsection (2)(b) applies only if:
- 10 (a) the court having jurisdiction over the youth is outside a metropolitan statistical area;
- 11 (b) alternative facilities are not available or alternative facilities do not provide adequate security;
- 12 and
- 13 (c) the youth is kept in an area that provides physical as well as sight and sound separation from
- 14 adults accused or convicted of criminal offenses.
- 15 (4) Whenever, despite all good faith efforts to comply with the time limitations specified in
- 16 subsection (2), the limitations are exceeded, this circumstance does not serve as grounds for dismissal of
- 17 the case nor does this circumstance constitute a defense in a subsequent delinquency or criminal
- 18 proceeding."
- 19
- 20 Section 24. Section 41-5-403, MCA, is amended to read:
- 21 "41-5-403. Disposition permitted under informal adjustment -- contributions by parents or
- 22 guardians for youth's care. (1) The following dispositions may be imposed by informal adjustment:
- 23 (a) probation;
- 24 (b) placement of the youth in substitute care in a youth care facility, as defined in 41-3-1102, and
- 25 as determined by the department;
- 26 (c) placement of the youth with a private agency responsible for the care and rehabilitation of the
- 27 youth as determined by the department;
- 28 (d) restitution upon approval of the youth court judge and subject to the provisions of Section 37;
- 29 (e) placement of the youth under home arrest as provided in Title 46, chapter 18, part 10.
- 30 (2) ~~In determining whether restitution is appropriate in a particular case, the following factors may~~

- 1 (1) In a licensed youth foster home as defined in 41-3-1102;
- 2 (2) In a facility operated by a licensed child welfare agency;
- 3 (3) In a licensed youth group home as defined in 41-3-1102; or
- 4 (4) under home arrest as provided in Title 46, chapter 18, part 10, either in the youth's own home
- 5 or in one of the facilities described in subsections (1) through (3).
- 6
- 7 NEW SECTION. Section 21. Place of detention. Placement in detention means placement in one
- 8 of the following facilities:
- 9 (1) a short-term detention center; or
- 10 (2) a youth detention facility, including a regional detention facility.
- 11
- 12 Section 22. Section 41-5-307, MCA, is amended to read:
- 13 "41-5-307. Release ~~or delivery~~ from custody -- detention -- shelter care. (1) Whenever a peace
- 14 officer believes, on reasonable grounds, that a youth can be released to a ~~responsible~~ person ~~who has~~
- 15 ~~custody of the youth, then the peace officer may release the youth to that person upon receiving a written~~
- 16 ~~promise from the person to bring the youth before the probation officer at a time and place specified in the~~
- 17 ~~written promise, or a peace officer may release the youth under any other reasonable circumstances.~~
- 18 (2) Whenever the peace officer believes, on reasonable grounds, that the youth must be detained,
- 19 the peace officer shall notify the probation officer immediately and shall, as soon as practicable, provide
- 20 the probation officer with a written report of ~~the peace officer's~~ reasons for holding the youth in
- 21 detention. If it is necessary to hold the youth pending appearance before the youth court, then the youth
- 22 must be held in a place of detention, as provided in Section 21, ~~that is~~ approved by the youth court.
- 23 (3) If the peace officer believes that the youth must be sheltered, the peace officer shall notify the
- 24 probation officer immediately and shall provide a written report of ~~the peace officer's~~ reasons for placing
- 25 the youth in shelter care. If the youth is then held, the youth must be placed in a shelter care facility
- 26 approved by the youth court."
- 27
- 28 Section 23. Section 41-5-311, MCA, is amended to read:
- 29 "41-5-311. Youth not to be detained in jail -- exceptions -- time limitations. (1) A youth may not
- 30 be detained or otherwise placed in a jail or other adult detention facility except as provided in 41-5-208 and

1 be considered in addition to any other evidence;
 2 (a) age of the youth;
 3 (b) ability of the youth to pay;
 4 (c) ability of the parent, legal guardian, or person contributing to the youth's delinquency or need
 5 for supervision to pay;
 6 (d) amount of damage to the victim; and
 7 (e) legal remedies of the victim. However, the ability of the victim or the victim's insurer to stand
 8 any loss may not be considered in any case.
 9 (2)(2) If the youth violates an aftercare agreement as provided for in 52-5-126, the youth must be
 10 returned to the court for further disposition. A youth may not be placed in a state youth correctional facility
 11 under informal adjustment.
 12 (4)(3) If the youth is placed in substitute care requiring payment by the department, the court, as
 13 provided in section 351, shall examine the financial ability of the youth's parents or guardians to pay a
 14 contribution covering all or part of the costs for the care, placement, and treatment of the youth, including
 15 the costs of necessary medical, dental, and other health care.
 16 (5)(4) If the court determines that the youth's parents or guardians are financially able to pay a
 17 contribution as provided in subsection (4)(3), the court shall order the youth's parents or guardians to pay
 18 an amount based on the uniform child support guidelines adopted by the department of public health and
 19 human services pursuant to 40-5-209.
 20 (6)-(a) Except as provided in subsection (6)(b), contributions ordered under this section and each
 21 modification of an existing order are enforceable by immediate or delinquency income withholding or both,
 22 under Title 40, chapter 5, part 4. An order for contribution that is inconsistent with this section is
 23 nevertheless subject to withholding for the payment of the contribution without need for an amendment
 24 of the support order or for any further action by the court.
 25 (b) A court ordered exception from contributions under this section must be in writing and be
 26 included in the order. An exception from the immediate income withholding requirement may be granted
 27 if the court finds there is:
 28 (i) good cause not to require immediate income withholding or
 29 (ii) an alternative arrangement between the department and the person who is ordered to pay
 30 contributions.

1 (c) A finding of good cause not to require immediate income withholding must, at a minimum, be
 2 based upon:
 3 (i) a written determination and explanation by the court of the reasons why the implementation of
 4 immediate income withholding is not in the best interests of the child; and
 5 (ii) proof of timely payment of previously ordered support in cases involving modification of
 6 contributions ordered under this section.
 7 (d) An alternative arrangement must:
 8 (i) provide sufficient security to ensure compliance with the arrangement;
 9 (ii) be in writing and be signed by a representative of the department and the person required to
 10 make contributions; and
 11 (iii) if approved by the court, be entered into the record of the proceeding.
 12 (7)-(e) If the court orders the payment of contributions under this section, the department shall
 13 apply to the department of public health and human services for support enforcement services pursuant
 14 to Title IV-D of the Social Security Act.
 15 (b) The department of public health and human services may collect and enforce a contribution
 16 order under this section by any means available under law, including the remedies provided for in Title 40,
 17 chapter 5, parts 2 and 4."
 18
 19 Section 25. Section 41-5-502, MCA, is amended to read:
 20 "41-5-502. Summons. (1) After a petition has been filed, summons must be served directly to:
 21 (a) the youth;
 22 (b) his [the youth's] parent or parents having actual custody of the youth or his [the youth's] guardian
 23 or custodian, as the case may be; and
 24 (c) other persons as the court may direct.
 25 (2) The summons must:
 26 (a) require the parties to whom it is directed to appear personally before the court at the time fixed
 27 by the summons to answer the allegations of the petition;
 28 (b) advise the parties of their right to counsel under the Montana Youth Court Act; and
 29 (c) have attached to it a copy of the petition.
 30 (3) The court may endorse upon the summons an order directing the person or persons having the

1 physical custody or control of the youth to bring the youth to the hearing.

2 (4) If it appears to the court that the youth needs to be placed in detention or shelter care, the
3 judge may endorse on the summons an order directing the officer serving the summons to at once take the
4 youth into custody and to take him the youth to the place of detention or shelter care designated by the
5 court, subject to the rights of the youth and parent or person having legal custody of the youth as set forth
6 in the provisions of the Montana Youth Court Act relating to detention and shelter care criteria and
7 postdetention proceedings.

8 (5) If any youth is placed in detention or shelter care under any provision of this chapter pending
9 an adjudication, the court shall, as soon as practicable, conduct a probable cause hearing as provided in
10 41-5-303 [section 12].

11 (8) The youth court judge may also admit the youth to bail in accordance with Title 46, chapter
12 9."

13
14 Section 28. Section 41-5-521, MCA, is amended to read:

15 "41-5-521. Adjudicatory hearing. (1) Prior to any adjudicatory hearing, the court shall determine
16 whether the youth admits or denies the offenses alleged in the petition. If the youth denies all offenses
17 alleged in the petition, the youth or the youth's parent, guardian, or attorney may demand a jury trial on
18 the contested offenses. In the absence of a demand, a jury trial is waived. If the youth denies some
19 offenses and admits others, the contested offenses may be dismissed in the discretion of the youth court
20 judge. The adjudicatory hearing must be set immediately and accorded a preferential priority.

21 (2) An adjudicatory hearing must be held to determine whether the contested offenses are
22 supported by proof beyond a reasonable doubt in cases involving a youth alleged to be delinquent or in
23 need of supervision. If the hearing is before a jury, the jury's function is to determine whether the youth
24 committed the contested offenses. If the hearing is before the youth court judge without a jury, the judge
25 shall make and record findings on all issues. If the allegations of the petitions are not established at the
26 hearing, the youth court shall dismiss the petition and discharge the youth from custody.

27 (3) An adjudicatory hearing must be recorded verbatim by whatever means the court considers
28 appropriate.

29 (4) The youth charged in a petition must be present at the hearing and, if brought from detention
30 to the hearing, may not appear clothed in institutional clothing.

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1 (5) In a hearing on a petition under this section, the general public may not be excluded, except
2 that in the court's discretion, the general public may be excluded if the petition does not allege ~~alleges~~ that
3 the youth is delinquent in need of supervision.

4 (8) If, on the basis of a valid admission by a youth of the allegations of the petition or after the
5 hearing required by this section, a youth is found to be a delinquent youth or a youth in need of
6 supervision, the court shall schedule a dispositional hearing under this chapter.

7 (7) When a jury trial is required in a case, it may be held before a jury selected as provided in Title
8 25, chapter 7, part 2, and in Rule 47, M.R.Civ.P."

9
10 Section 27. Section 41-5-522, MCA, is amended to read:

11 "41-5-522. Dispositional hearing. (1) As soon as practicable after a youth is found to be a
12 delinquent youth or a youth in need of supervision, the court shall conduct a dispositional hearing. The
13 dispositional hearing may involve a determination of the financial ability of the youth's parents or guardians
14 to pay a contribution for the cost of care, commitment, and treatment of the youth as required in 41-5-523
15 [section 35].

16 (2) Before conducting the dispositional hearing, the court shall direct that a social summary or
17 predisposition report be made in writing by a probation officer concerning the youth, the youth's family,
18 the youth's environment, and other matters relevant to the need for care or rehabilitation or disposition of
19 the case. The youth court may have the youth examined, and the results of the examination must be made
20 available to the court as part of the social summary or predisposition report. The court may order the
21 examination of a parent or guardian whose ability to care for or supervise a youth is at issue before the
22 court. The results of the examination must be included in the social summary or predisposition report. The
23 youth or the youth's parents, guardian, or counsel has the right to subpoena all persons who have prepared
24 any portion of the social summary or predisposition report and has the right to cross-examine the parties
25 at the dispositional hearing.

26 (3) Defense counsel must be furnished with a copy of the social summary or predisposition report
27 and psychological report prior to the dispositional hearing.

28 (4) The dispositional hearing must be conducted in the manner set forth in subsections (3), (4), and
29 (5) of 41-5-521. The court shall hear all evidence relevant to a proper disposition of the case best serving
30 the interests of the youth and the public. The evidence must include but is not limited to the social

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1 summary and predisposition report provided for in subsection (2) of this section.
 2 (5) If the court finds that it is in the best interest of the youth, the youth or the youth's parents
 3 or guardian may be temporarily excluded from the hearing during the taking of evidence on the issues of
 4 need for treatment and rehabilitation.
 5 (6) In determining whether restitution, as authorized by 41-5-523, is appropriate in a particular
 6 case, the following factors may be considered in addition to any other evidence:

- 7 (a) age of the youth;
- 8 (b) ability of the youth to pay;
- 9 (c) ability of the parents, legal guardian, or those that contributed to the youth's delinquency or
 10 need for supervision to pay;
- 11 (d) amount of damage to the victim; and
- 12 (e) legal remedies of the victim. However, the ability of the victim or the victim's insurer to attend
 13 any loss may not be considered in any case."
- 14

15 Section 28. Section 41-5-523, MCA, is amended to read:

16 "41-5-523. Disposition of youth in need of supervision — sentence to correctional facility —
 17 commitment to department — placement and evaluation of youth -- restrictions. (1) If a youth is found to
 18 be a delinquent youth or a youth in need of supervision, the youth court may enter its judgment making
 19 one or more of the following dispositions:

20 (a) retain jurisdiction in a disposition provided under subsection (1)(b) or (1)(d);

21 (b) (1) place the youth on probation; The youth court retains jurisdiction in a disposition under this
 22 subsection.

23 (c) subject to subsections (1)(a)(i), (2)(a), (2)(b), and (6), sentence a youth to one of the state
 24 youth correctional facilities established under 52-5-101 and, as part of the sentence, deny the youth
 25 eligibility for release without the express approval of the sentencing judge until the youth reaches 18 years
 26 of age. A youth may not be sentenced to a state youth correctional facility unless the department informs
 27 the judge that space is available for the youth at that facility. The sentencing judge may not place
 28 limitations on the release unless recommended by the youth placement committee.

29 (d) require a youth found to be delinquent to register as a sex offender pursuant to 46-18-254 and
 30 46-23-506;

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1 (e) (2) place the youth in an in-state residence that ensures that the youth is accountable, provides
 2 for rehabilitation, and protects the public. Before placement, the sentencing judge shall seek and consider
 3 placement recommendations from the youth placement committee. The judge may not place the youth in
 4 an in-state residence unless the department informs the judge that resources are available for placement
 5 of the youth at that residence.

6 (4)(3)(a) commit the youth to the department. In an order committing a youth to the department,
 7 the court shall determine whether continuation in the youth's own home would be contrary to
 8 the welfare of the youth and whether reasonable efforts have been made to prevent or eliminate the need
 9 for removal of the youth from the youth's home;

10 (b) The department may not place a youth in need of supervision in a state youth correctional
 11 facility.

12 (4) In the case of a delinquent youth who is determined by the court to be a serious juvenile
 13 offender, the judge may specify that the youth be placed in a state youth correctional facility if the judge
 14 finds that the placement is necessary for the protection of the public. The court may order the department
 15 to notify the court within 5 working days before the proposed release of a youth from a youth correctional
 16 facility. Once a youth is committed to the department for placement in a state youth correctional facility,
 17 the department is responsible for determining an appropriate date of release into an appropriate placement.

18 (g) (4) order restitution by the youth or the youth's parents or guardians, subject to the provisions
 19 of Section 37;

20 (4)(5) impose a fine as authorized by law if the violation alleged would constitute a criminal offense
 21 if committed by an adult;

22 (4)(8) require the performance of community service;

23 (4)(7) require the youth, the youth's parents or guardians, or the persons having legal custody of
 24 the youth to receive counseling services;

25 (4)(9) require the medical and psychological evaluation of the youth, the youth's parents or
 26 guardians, or the persons having legal custody of the youth;

27 (4)(9) require the parents, guardians, or other persons having legal custody of the youth to furnish
 28 services the court may designate;

29 (4)(10) subject to the provisions of Subsection (1), order further care, treatment, evaluation, or
 30 relief that the court considers beneficial to the youth and the community and that does not obligate funding

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1 from the department for services outside the state of Montana without the department's approval, except
 2 that a youth may not be placed by a youth court in a residential treatment facility as defined in 50-5-101,
 3 Only the department may, pursuant to subsection (1)(i), place a youth in a residential treatment facility;
 4 (a)(1) subject to the provisions of Section 311, commit the youth to a mental health facility if,
 5 based upon the testimony of a professional person as defined in 53-21-102, the court finds that the youth
 6 is seriously mentally ill as defined in 53-21-102. The youth is entitled to all rights provided by 53-21-114
 7 through 53-21-119;
 8 (b) A youth adjudicated mentally ill or seriously mentally ill as defined in 53-21-102 may not be
 9 committed or sentenced to a state youth correctional facility;
 10 (c) A youth adjudicated to be mentally ill or seriously mentally ill after placement in or sentencing
 11 to a state youth correctional facility must be moved to a more appropriate placement in response to the
 12 youth's mental health needs and consistent with the disposition alternatives available in 53-21-127;
 13 (d)(12) place the youth under home arrest as provided in Title 48, chapter 18, part 10.
 14 (2) When a youth is committed to the department, the department shall determine the appropriate
 15 placement and rehabilitation program for the youth after considering the recommendations made under
 16 41-5-527 by the youth placement committee. Placement is subject to the following limitations:
 17 (a) A youth in need of supervision or adjudicated delinquent for commission of an act that would
 18 not be a criminal offense if committed by an adult may not be placed in a state youth correctional facility;
 19 (b) A youth may not be held in a state youth correctional facility for a period of time in excess of
 20 the maximum period of imprisonment that could be imposed on an adult convicted of the offense or
 21 offense that brought the youth under the jurisdiction of the youth court. This section does not limit the
 22 power of the department to enter into an aftercare agreement with the youth pursuant to 53-5-126.
 23 (c) A youth may not be placed in or transferred to a penal institution or other facility used for the
 24 execution of sentence of adults convicted of crimes.
 25 (3) A youth placed in a state youth correctional facility or other facility or program operated by the
 26 department or who signs an aftercare agreement under 53-5-126 must be supervised by the department.
 27 A youth who is placed in any other placement by the department, the youth court, or the youth court's
 28 juvenile probation officer must be supervised by the probation officer of the youth court having jurisdiction
 29 over the youth under 41-5-205 whether or not the youth is committed to the department. Supervision by
 30 the youth probation officer includes but is not limited to:

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1 (e) submitting information and documentation necessary for the person, committee, or team that
 2 is making the placement recommendation to determine an appropriate placement for the youth;
 3 (f) securing approval for payment of special education costs from the youth's school district of
 4 residence or the office of public instruction, as required in Title 20, chapter 7, part 4;
 5 (g) submitting an application to a facility in which the youth may be placed; and
 6 (h) case management of the youth.
 7 (4) The youth court may order a youth to receive a medical or psychological evaluation at any time
 8 prior to final disposition if the youth waives the youth's constitutional rights in the manner provided for in
 9 41-5-202. The county determined by the court as the residence of the youth is responsible for the cost of
 10 the evaluation, except as provided in subsection (5). A county may contract with the department or other
 11 public or private agencies to obtain evaluation services ordered by the court.
 12 (5) The youth court shall determine the financial ability of the youth's parents to pay the cost of
 13 an evaluation ordered by the court under subsection (4). If they are financially able, the court shall order
 14 the youth's parents to pay all or part of the cost of the evaluation.
 15 (6) The youth court may not order placement or evaluation of a youth at a state youth correctional
 16 facility unless the youth is found to be a delinquent youth or is alleged to have committed an offense that
 17 is transferable to criminal court under 41-5-206.
 18 (7) An evaluation of a youth may not be performed at the Montana state hospital unless the youth
 19 is transferred to the district court under 41-5-206, 41-5-208, or 41-5-1105.
 20 (8) An order of the court may be modified at any time. In the case of a youth committed to the
 21 department, an order pertaining to the youth may be modified only upon notice to the department and
 22 subsequent hearing.
 23 (9) Whenever the court commits a youth to the department, it shall transmit with the dispositional
 24 judgment copies of medical reports, social history material, education records, and any other clinical,
 25 predisposition, or other reports and information pertinent to the care and treatment of the youth.
 26 (10) If a youth is committed to the department, the court shall examine the financial ability of the
 27 youth's parents or guardians to pay a contribution covering all or part of the costs for the care,
 28 commitment, and treatment of the youth, including the costs of necessary medical, dental, and other health
 29 care.
 30 (11) If the court determines that the youth's parents or guardians are financially able to pay a

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1 contribution as provided in subsection (10), the court shall order the youth's parents or guardians to pay
 2 an amount based on the uniform child support guidelines adopted by the department of public health and
 3 human services pursuant to 40-5-209.

4 (12)(a) Except as provided in subsection (12)(b), contributions ordered under this section and each
 5 modification of an existing order are enforceable by immediate or delinquency income withholding or both,
 6 under Title 40, chapter 5, part 4. An order for contribution that is inconsistent with this section is
 7 nevertheless subject to withholding for the payment of the contribution without need for an amendment
 8 of the support order or for any further action by the court.

9 (b) A court-ordered exception from contributions under this section must be in writing and be
 10 included in the order. An exception from the immediate income withholding requirement may be granted
 11 if the court finds there is:

12 (i) good cause not to require immediate income withholding or
 13 (ii) an alternative arrangement between the department and the person who is ordered to pay
 14 contributions,

15 (c) A finding of good cause not to require immediate income withholding must, at a minimum, be
 16 based upon

17 (i) a written determination and explanation by the court of the reasons why the implementation of
 18 immediate income withholding is not in the best interests of the youth; and

19 (ii) proof of timely payment of previously ordered support in cases involving modification of
 20 contributions ordered under this section.

21 (d) An alternative arrangement must

22 (i) provide sufficient security to ensure compliance with the arrangement;

23 (ii) be in writing and be signed by a representative of the department and the person required to
 24 make contributions; and

25 (iii) if approved by the court, be entered into the record of the proceeding.

26 (13) Upon showing of a change in the financial ability of the youth's parents or guardians to pay,
 27 the court may modify its order for the payment of contributions required under subsection (11).

28 (14)(a) If the court orders the payment of contributions under this section, the department shall
 29 apply to the department of public health and human services for support enforcement services pursuant
 30 to Title IV-D of the Social Security Act.

1 (b) The department of public health and human services may collect and enforce a contribution
 2 order under this section by any means available under law, including the remedies provided for in Title 40,
 3 chapter 5, parts 2 and 4."

4

5 NEW SECTION. Section 29. Disposition of delinquent youth -- restrictions. (1) If a youth is found
 6 to be a delinquent youth, the youth court may enter its judgment making one or more of the following
 7 dispositions:

8 (a) any one or more of the dispositions provided in 41-5-523;

9 (b) subject to 41-5-523(3)(b), [sections 30(1), 31(2)], and subsection (2) of this section, sentence
 10 a youth to one of the state youth correctional facilities established under 52-5-101 and, as part of the
 11 sentence, deny the youth eligibility for release without the express approval of the sentencing judge until
 12 the youth reaches 18 years of age. A youth may not be sentenced to a state youth correctional facility
 13 unless the department informs the judge that space is available for the youth at that facility. The sentencing
 14 judge may not place limitations on the release unless recommended by the youth placement committee.

15 (c) require a youth found to be delinquent, as the result of the commission of an offense that would
 16 be a violation of 45-5-501 through 45-5-504, 45-5-507, or 45-5-511 if committed by an adult, to register
 17 as a sex offender pursuant to 48-18-254 and 48-23-506. The youth court retains jurisdiction in a
 18 disposition under this subsection.

19 (d) in the case of a delinquent youth who is determined by the court to be a serious juvenile
 20 offender, the judge may specify that the youth be placed in a state youth correctional facility if the judge
 21 finds that the placement is necessary for the protection of the public. The court may order the department
 22 to notify the court within 5 working days before the proposed release of a youth from a youth correctional
 23 facility. Once a youth is committed to the department for placement in a state youth correctional facility,
 24 the department is responsible for determining an appropriate date of release into an appropriate placement.

25 (2) The youth court may not order placement of a youth at a state youth correctional facility unless
 26 the youth is found to be a delinquent youth or is alleged to have committed an offense that is transferable
 27 to criminal court under 41-5-206.

28

29 NEW SECTION. Section 30. Disposition -- commitment to department -- restrictions on placement.

30 When a youth is committed to the department, the department shall determine the appropriate placement

1 end rehabilitation program for the youth after considering the recommendations made under 41-5-527 by
 2 the youth placement committee. Placement is subject to the limitations contained in 41-5-523(3)(b) and
 3 the following limitations:

4 (1) A youth may not be held in a state youth correctional facility for a period of time in excess of
 5 the maximum period of imprisonment that could be imposed on an adult convicted of the offense or
 6 offense that brought the youth under the jurisdiction of the youth court. This section does not limit the
 7 power of the department to enter into an aftercare agreement with the youth pursuant to 52-5-126.
 8 (2) A youth may not be placed in or transferred to a penal institution or other facility used for the
 9 execution of sentence of adult convicted of crimes.

10 (3) The department may not place a youth adjudicated delinquent for commission of an act that
 11 would not be a criminal offense if committed by an adult in a state youth correctional facility.

12
 13 NEW SECTION. Section 31. Disposition -- finding of mentally ill or seriously mentally ill -- rights
 14 -- limitation on placement. (1) A youth who is found to be seriously mentally ill as defined in 53-21-102
 15 is entitled to all rights provided by 53-21-114 through 53-21-119.

16 (2) A youth who, prior to placement or sentencing, is found to be mentally ill, as defined in
 17 41-5-103, or seriously mentally ill, as defined in 53-21-102, may not be committed or sentenced to a state
 18 youth correctional facility.

19 (3) A youth who is found to be mentally ill or seriously mentally ill after placement in or sentencing
 20 to a state youth correctional facility must be moved to a more appropriate placement in response to the
 21 youth's mental health needs and consistent with the disposition alternatives available in 53-21-127.

22
 23 NEW SECTION. Section 32. Disposition -- commitment to department -- supervision. (1) A youth
 24 placed in a state youth correctional facility or other facility or program operated by the department or who
 25 signs an aftercare agreement under 52-5-126 must be supervised by the department.

26 (2) A youth who is placed in any other placement by the department, the youth court, or the youth
 27 court's juvenile probation officer must be supervised by the probation officer of the youth court having
 28 jurisdiction over the youth under 41-5-205 whether or not the youth is committed to the department.
 29 Supervision by the youth probation officer includes but is not limited to:

30 (a) submitting information and documentation necessary for the person, committee, or team that

1 is making the placement recommendation to determine an appropriate placement for the youth;

2 (b) securing approval for payment of special education costs from the youth's school district of
 3 residence or the office of public instruction, as required in Title 20, chapter 7, part 4;

4 (c) submitting an application to a facility in which the youth may be placed; and

5 (d) case management of the youth.

6
 7 NEW SECTION. Section 33. Disposition -- commitment to department -- transfer of records.
 8 Whenever the court commits a youth to the department, it shall transmit with the dispositional judgment
 9 copies of medical reports, social history material, education records, and any other clinical, predisposition,
 10 or other reports and information pertinent to the care and treatment of the youth.

11
 12 NEW SECTION. Section 34. Modification of court orders -- notice to department -- hearing. (1)
 13 An order of the court may be modified at any time.

14 (2) In the case of a youth committed to the department, an order pertaining to the youth may be
 15 modified only upon notice to the department and subsequent hearing.

16
 17 NEW SECTION. Section 35. Contribution for costs -- order for contribution -- exceptions --
 18 collection. (1) If a youth is committed to the department, the court shall examine the financial ability of
 19 the youth's parents or guardians to pay a contribution covering all or part of the costs for the care,
 20 commitment, and treatment of the youth, including the costs of necessary medical, dental, and other health
 21 care.

22 (2) If the court determines that the youth's parents or guardians are financially able to pay a
 23 contribution as provided in subsection (1), the court shall order the youth's parents or guardians to pay an
 24 amount based on the uniform child support guidelines adopted by the department of public health and
 25 human services pursuant to 40-5-209.

26 (3) (a) Except as provided in subsection (3)(b), contributions ordered under 41-5-403 and this
 27 section and each modification of an existing order are enforceable by immediate or delinquency income
 28 withholding, or both, under Title 40, chapter 5, part 4. An order for contribution that is inconsistent with
 29 this section is nevertheless subject to withholding for the payment of the contribution without need for an
 30 amendment of the support order or for any further action by the court.

(b) A court-ordered exception from contributions under 41-5-403 or this section must be in writing and must be included in the order. An exception from the immediate income withholding requirement may be granted if the court finds that there is:

- (i) good cause not to require immediate income withholding; or
- (ii) an alternative arrangement between the department and the person who is ordered to pay contributions.

(c) A finding of good cause not to require immediate income withholding must, at a minimum, be based upon:

- (i) a written determination and explanation by the court of the reasons why the implementation of immediate income withholding is not in the best interests of the youth; and
- (ii) proof of timely payment of previously ordered support in cases involving modification of contributions ordered under this section.

(d) An alternative arrangement must:

- (i) provide sufficient security to ensure compliance with the arrangement;
- (ii) be in writing and be signed by a representative of the department and the person required to make contributions; and
- (iii) if approved by the court, be entered into the record of the proceeding.

(4) Upon a showing of a change in the financial ability of the youth's parents or guardians to pay, the court may modify its order for the payment of contributions required under 41-5-403 or subsection (2).

(5) (e) If the court orders the payment of contributions under 41-5-403 or this section, the department shall apply to the department of public health and human services for support enforcement services pursuant to Title IV-D of the Social Security Act.

(b) The department of public health and human services may collect and enforce a contribution order under 41-5-403 or this section by any means available under law, including the remedies provided for in Title 40, chapter 5, parts 2 and 4.

NEW SECTION, Section 36. Disposition -- medical or psychological evaluation of youth -- costs.

(1) The youth court may order a youth to receive a medical or psychological evaluation at any time prior to final disposition if the youth waives the youth's constitutional rights in the manner provided for in 41-5-303. Except as provided in subsection (2), the county determined by the court as the residence of

the youth is responsible for the cost of the evaluation. A county may contract with the department or other public or private agencies to obtain evaluation services ordered by the court.

(2) The youth court shall determine the financial ability of the youth's parents or guardians to pay the cost of an evaluation ordered by the court under subsection (1). If they are financially able, the court shall order the youth's parents or guardians to pay all or part of the cost of the evaluation.

(3) The youth court may not order evaluation of a youth at a state youth correctional facility unless the youth is found to be a delinquent youth or is alleged to have committed an offense that is transferable to district court under 41-5-206.

(4) An evaluation of a youth may not be performed at the Montane state hospital unless the youth is transferred to the district court under 41-5-206, 41-5-208, or 41-5-1105.

NEW SECTION, Section 37. Restitution. (1) In determining whether restitution, as authorized by 41-5-403 and 41-5-523, is appropriate in a particular case, the following factors may be considered in addition to any other evidence:

- (a) age of the youth;
- (b) ability of the youth to pay;
- (c) ability of the parents, legal guardian, or those that contributed to the youth's delinquency or need for supervision to pay;
- (d) amount of damage to the victim; and
- (e) legal remedies of the victim. However, the ability of the victim or the victim's insurer to stand any loss may not be considered in any case.

(2) Restitution paid by a youth or a youth's parents or guardians is subject to subrogation as provided in 46-18-248.

Section 38. Section 41-5-525, MCA, is amended to read:

41-5-525. Youth placement committees -- composition. (1) In each judicial district, the department shall establish a youth placement committee for the purposes of:

- (a) recommending an appropriate placement of a youth referred to the department under 41-5-403; or
- (b) recommending available community services or alternative placements whenever a change is

1 required in the placement of a youth who is currently in the custody of the department under 41-5-523 of
 2 section 29. However, the committee may not substitute its judgment for that of the superintendent of a
 3 state youth correctional facility regarding the discharge of a youth from the facility.

4 (2) The committee consists of not less than five members and must include persons who are
 5 knowledgeable about the youth, treatment and placement options, and other resources appropriate to
 6 address the needs of the youth. Members may include:

7 (a) two representatives of the department;
 8 (b) a representative of the department of public health and human services;
 9 (c) either the chief probation officer or the youth's probation officer;
 10 (d) a mental health professional;
 11 (e) a representative of a school district located within the boundaries of the judicial district;
 12 (f) if an Indian child or children are involved, someone, preferably an Indian person, knowledgeable
 13 about Indian culture and family matters;
 14 (g) a parent or guardian; and
 15 (h) a youth services provider.

16 (3) Committee members serve without compensation.

17 (4) Notwithstanding the provisions of 41-5-527, the committee may be convened by the
 18 department or the probation officer of the youth court."

20 Section 39. Section 41-5-527, MCA, is amended to read:

21 "41-5-527. Youth placement committee to submit recommendation to department -- acceptance
 22 or rejection of recommendation by department. (1) Prior to commitment of a youth to the department
 23 pursuant to 41-5-523 of section 29, a youth placement committee must be convened. The committee
 24 shall submit in writing to the department and to the youth court judge its primary and alternative
 25 recommendations for placement of the youth.

26 (2) If the department accepts either of the committee's recommendations, it shall promptly notify
 27 the committee in writing.

28 (3) If the department rejects both of the committee's recommendations, it shall promptly notify the
 29 committee in writing of the reasons for rejecting the recommendations and shall make an appropriate
 30 placement for the youth.

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1 (4) Within 72 hours after making a decision on a placement or change of placement, the
 2 department shall notify the youth court of the decision and of the placement or change of placement."

4 Section 40. Section 41-5-530, MCA, is amended to read:

5 "41-5-530. Parental contributions account -- allocation of proceeds. (1) There is a parental
 8 contributions account in the state special revenue fund.

7 (2) Contributions paid by the parents and guardians of youth under 41-3-406, 41-5-403, 41-5-523
 8 section 35, or 41-5-524 must be deposited in the account.

9 (3) All money in the account, except any amount required to be returned to federal or county
 10 sources, is allocated to the department of public health and human services to carry out its duties under
 11 52-1-103."

13 Section 41. Section 41-5-1004, MCA, is amended to read:

14 "41-5-1004. Distribution of grants -- limitation of funding -- restrictions on use. (1) The board shall
 15 award grants on an equitable basis, giving preference to services that will be used on a regional basis.

18 (2) The board shall award grants to eligible counties:

17 (a) In a block grant in an amount not to exceed 50% of the approved, estimated cost of secure
 18 detention; or

19 (b) on a matching basis in an amount not to exceed:

20 (i) 75% of the approved cost of providing holdovers, attendant care, and other alternatives to
 21 secure detention, except for shelter care. Shelter care must be paid as provided by law.

22 (ii) 50% of the approved cost of programs for the transportation of youth to appropriate detention
 23 or shelter care facilities, including regional detention facilities.

24 (3) Based on funding available after the board has funded block grants under subsection 12, the
 25 board shall, in cases of extreme hardship in which the transfer of youth court cases to the adult system
 26 has placed considerable financial strain on a county's resources, award grants to eligible counties to fund
 27 up to 75% of the actual costs of secure detention of youth awaiting transfer. Hardship cases will be
 28 addressed at the end of the fiscal year and will be awarded by the board based upon a consideration of the
 29 applicant county's past 3 years' expenditures for youth detention and upon consideration of the particular
 30 case or cases that created the hardship expenditure for which the hardship grant is requested.

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(4) Grants under 41-5-1002 may not be used to pay for the cost of youth evaluations. The cost of evaluations must be paid as provided for in 41-5-523 [section 38]."

Section 42. Section 41-5-1104, MCA, is amended to read:

"41-5-1104. Disposition in extended jurisdiction prosecutions. (1) If a youth in an extended jurisdiction prosecution pleads guilty to or is found guilty of an offense described in 41-5-1102(1)(b), the court shall:

(a) impose one or more juvenile dispositions under 41-5-523 [section 29]; and

(b) impose an adult criminal sentence, the execution of which must be stayed on the condition that the youth not violate the provisions of the disposition order and not commit a new offense. If the youth violates the conditions of the stay or commits a new offense, the adult criminal sentence must be executed as provided in 41-5-1105.

(2) Except as provided in subsection (3), if a youth in an extended jurisdiction prosecution is convicted of an offense not described in 41-5-1102(1)(b), the court shall adjudicate the youth delinquent and order a disposition under 41-5-523 [section 29].

(3) If a youth in an extended jurisdiction prosecution pleads guilty to an offense not described in 41-5-1102(1)(b), the court may impose, with the youth's consent, a disposition provided under subsection (1)(b) of this section. If the youth does not consent to disposition under subsection (1)(b), the court shall impose a disposition as provided under subsection (2)."

Section 43. Section 48-24-207, MCA, is amended to read:

"48-24-207. Victims and witnesses of juvenile felony offenses -- consultation -- notification of proceedings. (1) The attorney general shall ensure that the services and assistance that must be provided under this chapter to a victim or witness of a crime are also provided to the victim or witness of a juvenile felony offense.

(2) In a proceeding filed under Title 41, chapter 5, part 514 or 15, the county attorney or a designee shall consult with the victim of a juvenile felony offense or, in the case of a minor victim or a homicide victim, with the victim's family regarding the disposition of the case, including:

(a) a dismissal of the petition filed under 41-5-501;

(b) a reduction of the charge to misdemeanor;

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(c) the release of the youth from detention or shelter care pending the adjudicatory hearing; and
(d) the disposition of the youth.

(3) (a) Whenever possible, a person described in subsection (3)(b) who provides the youth court with a current address and telephone number must receive prompt advance notification of youth court case proceedings, including:

(i) the filing of a petition under 41-5-501;

(ii) the release of the youth from detention or shelter care; and

(iii) proceedings in the adjudication of the petition, including, when applicable, entry of a consent decree under 41-5-524, the setting of a date for the adjudicatory hearing under 41-5-521, the setting of a date for the dispositional hearing under 41-5-522, the disposition made, and the release of the youth from a youth correctional facility.

(b) A person entitled to notification under this subsection (3) must be a victim of a juvenile felony offense, an adult relative of the victim if the victim is a minor, or an adult relative of a homicide victim.

(c) The court shall provide to the department the list of people entitled to notification under this subsection (3), and the department is responsible to provide the notification.

(4) For purposes of this section, "juvenile felony offense" means an offense committed by a juvenile that, if committed by an adult, would constitute a felony offense. The term includes any offense for which a juvenile may be declared a serious juvenile offender, as defined in 41-5-103."

Section 44. Section 52-5-129, MCA, is amended to read:

"52-5-129. Hearing on alleged violation of aftercare agreement -- right to appeal outcome. (1) When it is alleged by an aftercare counselor that a youth has violated the terms of the youth's aftercare agreement, the youth must be granted a hearing at the site of the alleged violation or in the county in which the youth is residing or is found within 10 days after notice has been served on the youth or the youth is detained, whichever is earlier. The purpose of the hearing is to determine whether the youth committed the violation and, if so, whether the violation is of such a nature that the youth should be returned to the youth correctional facility from which the youth was released or a different plan for treatment should be pursued by the department of corrections.

(2) The youth, upon advice of an attorney, may waive the right to a hearing.

(3) With regard to this hearing, the youth must be given:

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1 (e) written notice of the alleged violation of the aftercare agreement, including notice of the
2 purpose of the hearing;

3 (b) a disclosure of the evidence against the youth and the facts constituting the alleged violation;

4 (c) the opportunity to be heard in person and to present witnesses and documentary evidence to
5 controvert the evidence against the youth and to show that there are compelling reasons that justify or
6 mitigate the violation;

7 (d) the opportunity to have the ~~referee~~ hearings officer subpoena witnesses;

8 (e) the right to confront and cross-examine adverse witnesses;

9 (f) the right to be represented by an attorney;

10 (g) a record of the hearing; and

11 (h) notice that a written statement as to the evidence relied upon in reaching the final decision and
12 the reasons for the final decision will be provided by the ~~referee~~ hearings officer.

13 (4) The department shall appoint a ~~referee~~ hearings officer, who may not be an employee of the
14 department, to conduct the hearing. In the conduct of the hearing, the department may request the county
15 attorney's assistance as necessary. The department shall adopt rules necessary to effect a prompt and full
16 review.

17 (5) If the ~~referee~~ hearings officer finds, by a preponderance of the evidence, that the youth did in
18 fact commit the violation, the ~~referee~~ hearings officer shall make a recommendation to the department for
19 the placement of the youth. In making this recommendation, the ~~referee~~ hearings officer may consider
20 mitigating circumstances. Final approval rests with the department and must be made within 10 days of
21 the ~~referee's~~ hearings officer's recommendation.

22 (6) The youth may appeal from the decision at the hearing to the district court of the county in
23 which the hearing was held by serving and filing a notice of appeal with the court within 10 days of the
24 department's decision. The youth may obtain a written transcript of the hearing from the department by
25 giving written notice of appeal. The district court, upon receipt of a notice of appeal, shall order the
26 department to promptly certify to the court a record of all proceedings before the department and shall
27 proceed to a prompt hearing on the appeal based upon the record on appeal. The decision of the
28 department may not be altered except for abuse of discretion or manifest injustice.

29 (7) Pending the hearing on a violation and pending the department's decision, a youth may not be
30 detained except when the youth's detention or care is required to protect the person or property of the

1 youth or of others or the youth may abscond or be removed from the community. The department shall
2 determine the place and manner of detention and is responsible for the cost of the detention. Procedures
3 for taking into custody and detention of a youth charged with violation of the youth's aftercare agreement
4 are as provided in 41-5-303, 41-5-308, 41-5-311, ~~and 41-5-314.~~ Sections 12 through 14, and Sections
5 18 through 21.

6 (8) If the decision is made to return the youth to the youth correctional facility from which the
7 youth was released and the youth appeals that decision, the youth shall await the outcome of the appeal
8 at the facility."

9

10 Section 45, Section 53-9-107, MCA, is amended to read:

11 "53-9-107. Public inspection and disclosure of division's records. (1) Except as provided in
12 subsections (2) and (3), the records the division maintains in its possession in the administration of this part
13 are open to public inspection and disclosure.

14 (2) Confidential criminal justice information obtained by the division is subject to the confidentiality
15 provisions of the Montana Criminal Justice Information Act of 1979, Title 44, chapter 5. Information
16 regarding youth court proceedings obtained by the division is subject to the confidentiality provisions of
17 Title 41, chapter 5, part 6.

18 (3) In assuring that the right of individual privacy so essential to the well-being of a free society
19 may not be infringed without the showing of a compelling state interest, the following public records of the
20 division are exempt from disclosure:

21 (a) Information of a personal nature, such as personal, medical, or similar information, if the public
22 disclosure thereof would constitute an unreasonable invasion of privacy, unless the public interest by clear
23 and convincing evidence requires disclosure in the particular instance. The party seeking disclosure shall
24 have the burden of showing that public disclosure would not constitute an unreasonable invasion of
25 privacy.

26 (b) any public records or information, the disclosure of which is prohibited by federal law or
27 regulations.

28 (4) If any public record of the division contains material which ~~that~~ is not exempt under subsection
29 (3), as well as material which ~~that~~ is exempt from disclosure, the division shall separate the exempt and
30 nonexempt and make the nonexempt material available for examination."

1 NEW SECTION, Section 46. Repealer. Sections 41-5-310 and 41-5-312, MCA, are repealed.

2

3 NEW SECTION, Section 47. Code commissioner instructions. (1)(a) The code commissioner is

4 instructed to renumber the following sections into Title 41, chapter 5, part 1: 41-5-207, 41-5-525,

5 41-5-526, 41-5-527, 41-5-528, 41-5-529, 41-5-530.

6 (b) The code commissioner is instructed to renumber the following sections into Title 41, chapter

7 5, part 2: 41-5-803, 41-5-804, 41-5-805.

8 (c) The code commissioner is instructed to renumber sections in Title 41, chapter 5, part 3, to

9 achieve a logical sequence.

10 (d) The code commissioner is instructed to renumber the following sections into Title 41, chapter

11 5, part 12: 41-5-301, 41-5-304.

12 (e) The code commissioner is instructed to renumber the following sections into Title 41, chapter

13 5, part 13: 41-5-401, 41-5-402, 41-5-403.

14 (f) The code commissioner is instructed to renumber the following sections into Title 41, chapter

15 5, part 14: 41-5-202, 41-5-501, 41-5-502, 41-5-503, 41-5-511, 41-5-512, 41-5-513, 41-5-514,

16 41-5-515, 41-5-524, 41-5-531, 41-5-532.

17 (g) The code commissioner is instructed to renumber the following sections into Title 41, chapter

18 5, part 15: 41-5-521, 41-5-522, 41-5-523, 41-5-533.

19 (h) The code commissioner is instructed to renumber the following sections into Title 41, chapter

20 5, part 16: 41-5-1101, 41-5-1102, 41-5-1103, 41-5-1104, 41-5-1105.

21 (i) The code commissioner is instructed to renumber the following sections into Title 41, chapter

22 5, part 17: 41-5-701, 41-5-702, 41-5-703, 41-5-704, 41-5-705, 41-5-708.

23 (j) The code commissioner is instructed to renumber the following sections into Title 41, chapter

24 5, part 18: 41-5-802, 41-5-809, 41-5-810, 41-5-811, 41-5-812, 41-5-813, 41-5-814.

25 (k) The code commissioner is instructed to renumber the following sections into Title 41, chapter

26 5, part 19: 41-5-1001, 41-5-1002, 41-5-1003, 41-5-1004, 41-5-1005, 41-5-1008, 41-5-1007,

27 41-5-1008.

28 (2) The code commissioner is instructed to implement 1-1-101(2)(g)(iii) by correcting any clearly

29 inaccurate references to or in sections of the Montana Code Annotated caused by the renumbering required

30 by this section, including material enacted by the 55th legislature.

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1 NEW SECTION, Section 48. Codification instruction. (1) Sections 12 through 14, 18, and 18

2 through 21 are intended to be codified as an integral part of Title 41, chapter 5, part 3, and the provisions

3 of Title 41, chapter 5, part 3, apply to sections 12 through 14, 18, and 18 through 21.

4 (2) Sections 6 through 8 are intended to be codified as an integral part of Title 41, chapter 5, part

5 12, and the provisions of Title 41, chapter 5, part 12, apply to sections 6 through 8.

6 (3) Section 9 is intended to be codified as an integral part of Title 41, chapter 5, part 13, and the

7 provisions of Title 41, chapter 5, part 13, apply to section 9.

8 (4) Section 10 is intended to be codified as an integral part of Title 41, chapter 5, part 14, and

9 the provisions of Title 41, chapter 5, part 14, apply to section 10.

10 (5) Sections 29 through 37 are intended to be codified as an integral part of Title 41, chapter 5,

11 part 15, and the provisions of Title 41, chapter 5, part 15, apply to sections 29 through 37.

12

13 NEW SECTION, Section 49. Coordination instruction. (1) If Bill No. ___ [LC 224] is passed

14 and approved and if it includes a section that amends 41-5-523(3)(b), then the code commissioner is

15 instructed to compile the two provisions to retain the structure of (this act) and the substantive changes

16 of ___ Bill No. ___ [LC 224].

17 (2) If ___ Bill No. ___ [LC 222] is passed and approved and if it includes a section that amends

18 41-5-523(2)(b), then the code commissioner is instructed to compile the two provisions to retain the

19 structure of (this act) and the substantive changes of ___ Bill No. ___ [LC 222].

20

21 NEW SECTION, Section 50. Saving clause. [This act] does not effect rights and duties that

22 matured, penalties that were incurred, or proceedings that were begun before [the effective date of this

23 act].

24

25 NEW SECTION, Section 51. Applicability. [This act] applies to proceedings commenced after [the

26 effective date of this act].

27

-END-

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BILL NO. _____

INTRODUCED BY _____

BY REQUEST OF THE JUVENILE JUSTICE AND MENTAL HEALTH STUDY COMMISSION

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATING TO JUVENILE JUSTICE; GENERALLY REVISING THE LAWS RELATING TO EXTENDED JURISDICTION PROSECUTION OF JUVENILES; AUTHORIZING THE COURT OR THE COUNTY ATTORNEY TO DESIGNATE A JUVENILE AS AN EXTENDED JURISDICTION JUVENILE; AUTHORIZING ADULT FELONY SENTENCES FOR EXTENDED JURISDICTION JUVENILES; EXTENDING YOUTH COURT JURISDICTION TO AGE 25 FOR EXTENDED JURISDICTION JUVENILES; GENERALLY REVISING THE LAW RELATING TO THE TRANSFER OF JUVENILE CASES TO THE DISTRICT COURT AFTER PROSECUTION IN THE YOUTH COURT WITH RESPECT TO CASES THAT ARE NOT EXTENDED JURISDICTION JUVENILE PROSECUTION CASES OR WERE NOT PREVIOUSLY TRANSFERRED TO ADULT COURT FOR PROSECUTION; PROVIDING FOR TRANSFER, AFTER A HEARING, OF SUPERVISORY RESPONSIBILITY OF CERTAIN JUVENILE CASES FROM THE YOUTH COURT TO THE DISTRICT COURT AFTER PROSECUTION WITH RESPECT TO CASES THAT ARE NOT EXTENDED JURISDICTION JUVENILE PROSECUTION CASES OR WERE NOT PREVIOUSLY TRANSFERRED TO ADULT COURT FOR PROSECUTION; AMENDING SECTIONS 41-5-203, 41-5-205, 41-5-208, 41-5-501, 41-5-1102, 41-5-1103, 41-5-1104, AND 41-5-1105, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 41-5-203, MCA, is amended to read:

"41-5-203. Jurisdiction of the court. (1) Except as provided in subsection (2), the court has exclusive original jurisdiction of all proceedings under the Montana Youth Court Act in which a youth is alleged to be a delinquent youth, a youth in need of supervision, or a youth in need of care or concerning any person under 21 years of age charged with having violated any law of the state or ordinance of any city or town other than a traffic or fish and game law prior to having become 18 years of age.

(2) Justice, municipal, and city courts have concurrent jurisdiction with the youth court over all alcoholic beverage, tobacco products, and gambling violations alleged to have been committed by a youth,

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(3) The court has jurisdiction to designate a proceeding an extended jurisdiction juvenile prosecution, to conduct a hearing, to receive a plea, and to impose upon a youth who is convicted as an extended jurisdiction juvenile an adult sentence that may extend beyond the youth's age of majority."

Section 2. Section 41-5-205, MCA, is amended to read:

"41-5-205. Retention of jurisdiction - termination. (1) The court may dismiss a petition or otherwise terminate jurisdiction on its own motion or on the motion or petition of any interested party at any time. Once a court obtains jurisdiction over a youth, the court retains jurisdiction unless terminated by the court or by mandatory termination in the following cases: and except as provided in subsections (2) and (3), the jurisdiction of the court continues until the individual becomes 21 years of age.

(2) Court jurisdiction terminates when:

(a) at the time the proceedings are transferred to adult criminal district court under 41-5-208 or 41-5-208;

(b) at the time the youth is discharged by the department; and or

(c) execution of an adult sentence is ordered under 41-5-1105(2)(b)(iii) and the supervisory responsibilities are transferred to the district court under 41-5-1105.

(2) In any event at the time the youth reaches the age of 21 years,

(3) The jurisdiction of the court over an extended jurisdiction juvenile, with respect to the offense for which the youth was convicted as an extended jurisdiction juvenile, extends until the offender becomes 25 years of age unless the court terminates jurisdiction before that date."

Section 3. Section 41-5-208, MCA, is amended to read:

"41-5-208. Transfer to criminal court prior to prosecution -- optional designation as extended jurisdiction juvenile prosecution. (1) After Subject to subsection (10), after a petition has been filed alleging delinquency and before hearing the petition on its merits, the court may, upon motion of the county attorney, before hearing the petition on its merits, transfer the matter of prosecution to the district court if:

(a) (i) the youth charged was 12 years of age or more at the time of the conduct alleged to be unlawful and the unlawful act would constitute sexual intercourse without consent as defined in 45-5-503,

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1 deliberate homicide as defined in 45-5-102, mitigated deliberate homicide as defined in 45-5-103, or the
 2 attempt, as defined in 45-4-103, of either deliberate or mitigated deliberate homicide if the act had been
 3 committed by an adult; or
 4 (iii) the youth charged was 16 years of age or more at the time of the conduct alleged to be unlawful
 5 and the unlawful act is one or more of the following:
 6 (A) negligent homicide as defined in 45-5-104;
 7 (B) arson as defined in 45-6-103;
 8 (C) aggravated or felony assault as defined in 45-5-202;
 9 (D) robbery as defined in 45-5-401;
 10 (E) burglary or aggravated burglary as defined in 45-6-204;
 11 (F) aggravated kidnapping as defined in 45-5-303;
 12 (G) possession of explosives as defined in 45-6-335;
 13 (H) criminal sale of dangerous drugs as defined in 45-9-101;
 14 (I) criminal production or manufacture of dangerous drugs as defined in 45-9-110;
 15 (J) attempt, as defined in 45-4-103, of any of the acts enumerated in subsections (1)(e)(iii)(A)
 16 through (1)(e)(iii)(f);
 17 (b) a hearing on whether the transfer should be made is held in conformity with the rules on a
 18 hearing on a petition alleging delinquency, except that the hearing must be conducted by the youth court
 19 without a jury;
 20 (c) notice in writing of the time, place, and purpose of the hearing is given to the youth, the
 21 youth's counsel, and the youth's parents, guardian, or custodian at least 10 days before the hearing; and
 22 (d) the court finds upon the hearing of all relevant evidence that there is probable cause to believe
 23 that:
 24 (i) the youth committed the delinquent act alleged;
 25 (ii) the seriousness of the offense and the protection of the community require treatment of the
 26 youth beyond that afforded by juvenile facilities; and
 27 (iii) the alleged offense was committed in an aggressive, violent, or premeditated manner.
 28 (2) In transferring the matter of prosecution to the district court, the court may also consider the
 29 following factors:
 30 (a) the sophistication and maturity of the youth, determined by consideration of the youth's home,

1 environmental situation, and emotional attitude and pattern of living;

2 (b) the record and previous history of the youth, including previous contacts with the youth court,
 3 law enforcement agencies, youth courts in other jurisdictions, prior periods of probation, and prior
 4 commitments to juvenile institutions. However, lack of a prior juvenile history with youth courts is not of
 5 itself grounds for denying the transfer.

6 (3) The court shall grant the motion to transfer if the youth was 16 years old or older at the time
 7 of the conduct alleged to be unlawful and the unlawful act would constitute deliberate homicide as defined
 8 in 45-5-102, mitigated deliberate homicide as defined in 45-5-103, or the attempt, as defined in 45-4-103,
 9 of either deliberate or mitigated deliberate homicide if the act had been committed by an adult.

10 (4) Upon transfer to district court, the judge shall make written findings of the reasons why the
 11 jurisdiction of the youth court was waived and the case transferred to district court.

12 (5) The transfer terminates the jurisdiction of the youth court over the youth with respect to the
 13 acts alleged in the petition. A youth may not be prosecuted in the district court for a criminal offense
 14 originally subject to the jurisdiction of the youth court unless the case has been transferred as provided in
 15 this section. A case may be transferred to district court after prosecution as provided in 41-5-208 or
 16 41-5-1105.

17 (6) Upon order of the youth court transferring the case to the district court under subsection (5),
 18 the county attorney shall file the information against the youth without unreasonable delay.

19 (7) Any offense not enumerated in subsection (1) that arises during the commission of a crime
 20 enumerated in subsection (1) may be:

21 (a) tried in youth court;

22 (b) transferred to district court with an offense enumerated in subsection (1), upon motion of the
 23 county attorney and order of the youth court judge.

24 (8) If a youth is found guilty in district court of any of the offenses transferred by the youth court
 25 and is sentenced to the state prison, the commitment must be to the department of corrections. The
 26 department shall confine the youth in whatever institution that it considers proper, including a state youth
 27 correctional facility under the procedures of 52-5-111. However, a youth under 16 years of age may not
 28 be confined in the state prison.

29 (9) A youth whose case is transferred to district court may not be detained or otherwise placed
 30 in a jail or other adult detention facility before final disposition of the youth's case unless:

(3) After the hearing, if the court finds by a preponderance of the evidence that transfer of continuing supervisory responsibility to the district court is appropriate, the court shall order the transfer.
 (2)(4) If a youth whose case has been transferred to district court under this section violates a disposition previously imposed under 41-5-523, the district court may, after hearing, impose conditions as provided under 48-16-201 through 48-18-203.
 (2)(5) If, at the time of transfer, the youth is incarcerated in a state youth correctional facility, the district court may order that the youth, after reaching 16 years of age:
 (e) be incarcerated in a state adult correctional facility, boot camp, or prerelease center; or
 (b) be supervised by the department.
 (4)(6) The district court's jurisdiction over a case transferred under this section terminates when the youth reaches 25 years of age."

Section 5, Section 41-5-501, MCA, is amended to read:

"41-5-501. Petition -- form and content. (1) A petition initiating proceedings under this chapter shall must be signed by the county attorney and shall must be entitled "In the Matter of, a youth" and shall must set forth with specificity:
 (4)(a) the facts necessary to invoke the jurisdiction of the court, together with a statement alleging the youth to be a delinquent or in need of supervision;
 (2)(b) the charge of an offense, which that shall must:
 (4)(i) state the name of the offense;
 (4)(ii) cite in customary form the statute, rule, or other provisions of law which that the youth is alleged to have violated;

(4)(iii) state the facts constituting the offense in ordinary and concise language and in a such manner as to enable that enables a person of common understanding to know what is intended; and
 (4)(iv) state the time and place of the offense as definitely as can be done;
 (2)(c) the name, birth date, and residence address of the youth;
 (4)(d) the names and residence addresses of parents, guardian, and spouse of the youth and, if none of the parents, guardian, or spouse resides or can be found within the state or if there is none, the adult relative residing nearest to the court;)

(4)(e) whether the youth is in detention or shelter care and, if so, the place of detention or shelter

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(e) alternative facilities do not provide adequate security; and
 (b) the youth is kept in an area that provides physical, as well as sight and sound, separation from adults accused or convicted of criminal offenses.
 (10) After a hearing on the motion to transfer to district court, the court may designate the case as an extended jurisdiction juvenile prosecution under part 11 of this chapter, rather than transferring the matter to district court."

Section 4, Section 41-5-208, MCA, is amended to read:
 "41-5-208. Transfer of supervisory responsibility to district court after prosecution-- juvenile disposition in district court -- limitation on jurisdiction
nonextended jurisdiction and nontransferred cases. (1) To After adjudication by the court of a case that was not transferred to district court under 41-5-208 and that was not prosecuted as an extended jurisdiction juvenile prosecution under part 11 of this chapter, the court may, on its own motion or the motion of the county attorney, transfer jurisdiction to the district court and order the transfer of supervisory responsibility from juvenile probation services to adult probation services. A transfer under this section may be made to ensure continued compliance with the court's disposition under 41-5-523, and may be made at any time after a youth reaches 18 years of age but before the youth reaches 21 years of age, the youth court judge may transfer jurisdiction to district court and order the transfer of supervisory responsibility, and the youth's case file to the department.

(2) Before transfer, the court shall hold a hearing on whether the transfer should be made. The hearing must be held in conformity with the rules on a hearing on a petition alleging delinquency, except that the hearing must be conducted by the court without a jury. The court shall give the youth, the youth's counsel, and the youth's parents, guardian, or custodian notice in writing of the time, place, and purpose of the hearing at least 10 days before the hearing. At the hearing, the youth is entitled to receive:

(a) written notice of the motion to transfer;
 (b) an opportunity to be heard in person and to present witnesses and evidence;
 (c) a written statement by the court of the evidence relied on and reasons for the transfer;
 (d) the right to cross-examine witnesses, unless the court finds good cause for not allowing confrontation; and
 (e) the right to counsel.

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care and the time he ~~that~~ the youth was detained or sheltered;

(6)(j) if any of the matters required to be set forth by this section are not known, a statement of those matters and the fact that they are not known; and

(7)(g) a list of witnesses to be used in proving the commission of the offense or offenses charged in the petition, together with their residence addresses. The names and addresses of any witnesses discovered after the filing of the petition shall must be furnished to the youth upon request.

(2) When a county attorney files a delinquency petition alleging that a youth committed an offense that would be a felony if committed by an adult and that is transferable under 41-5-206 or in which a youth 12 years of age or older allegedly used a firearm, the county attorney shall indicate in the petition whether the county attorney designates the proceeding an extended jurisdiction juvenile prosecution. When the county attorney files a delinquency petition alleging that a youth committed any other offense that would be a felony if committed by an adult, the county attorney may request that the court designate the proceeding an extended jurisdiction juvenile prosecution.

Section 6. Section 41-5-1102, MCA, is amended to read:

~~"41-5-1102. Extended jurisdiction juvenile prosecution defined—~~
~~jurisdiction—extended — designation. (1) A youth court case involving a youth alleged to have committed an offense that would be a felony if committed by an adult is an extended jurisdiction juvenile prosecution if:~~

(a) the youth was at least 14 years of age at the time of the alleged offense, the ~~prosecutor~~ county attorney requests that the case be designated an extended jurisdiction juvenile prosecution, a hearing is held under 41-5-1103, and the court designates the case as an extended jurisdiction juvenile prosecution;

(b) the county attorney designates in the delinquency petition that the proceeding is an extended jurisdiction juvenile prosecution and the youth is alleged to have committed;

(i) the alleged offense that is transferable under 41-5-206; or

(ii) any felony in which the youth allegedly used a firearm, if the youth was at least 12 years of age at the time of the alleged offense and allegedly used a weapon; ~~or~~

(c) after a hearing upon a motion for transfer of the matter of prosecution to the district court under 41-5-206, the court designates the case as an extended jurisdiction juvenile prosecution.

(2) To enforce the court's disposition in an extended jurisdiction juvenile prosecution, the court shall retain jurisdiction until the case is transferred to district court under this part or jurisdiction is terminated under the provisions of as provided in 41-5-205."

Section 7. Section 41-5-1103, MCA, is amended to read:

~~"41-5-1103. Hearing — court designation on request. (1) When a prosecutor county attorney requests that a case be designated as an extended jurisdiction juvenile prosecution under 41-5-1102(1)(e), the court shall hold a hearing to consider the request.~~

(2) The hearing must be held within 30 days of the filing of the request unless good cause is shown by the prosecutor county attorney or the youth that the hearing should be held later, in which case the hearing must be held within 90 days of the request.

(3) If the prosecutor county attorney shows by clear and convincing evidence that designating the case as an extended jurisdiction juvenile prosecution serves public safety, the court may, within 15 days after the hearing, designate the case as an extended jurisdiction juvenile prosecution. In determining whether public safety is served, the court shall consider the factors enumerated in Section 101.

~~(4) An order designating a case as an extended jurisdiction prosecution is not appealable until after disposition under 41-5-1104."~~

Section 8. Section 41-5-1104, MCA, is amended to read:

~~"41-5-1104. Disposition in extended jurisdiction juvenile prosecutions. (1) After designation as an extended jurisdiction juvenile prosecution, the case must proceed with an adjudicatory hearing, as provided in 41-5-521. If a youth in an extended jurisdiction juvenile prosecution pleads guilty to or is found guilty of an offense described in 41-5-1102(1)(b) a felony, the court shall:~~

(a) impose one or more juvenile dispositions under 41-5-523; and

(b) impose an adult criminal sentence, the allowed by the statute that establishes the penalty for the offense of which the youth is convicted and that would be permissible if the offender were an adult.

The execution of which the sentence imposed under this subsection must be stayed on the condition that the youth not violate the provisions of the disposition order and not commit a new offense. If the youth violates the conditions of the stay or commits a new offense, the adult criminal sentence must be executed as provided in 41-5-1105.

(ii) impose one or more dispositions under 41-5-523; or
 (iii) subject to 41-5-208(8) and (9), order execution of the sentence imposed under
41-5-1104(1)(b)-or,
 (iii) continue the stay and make written findings regarding the mitigating factors that justify
continuing the stay;
 (3) if the stay of an adult sentence is revoked under this section, jurisdiction must be transferred
to district court for execution of the sentence, subject to 41-5-206(8) and (9);
 (3) Upon revocation and disposition under subsection (2)(b)(iii), the youth court shall transfer the
case to the district court. Upon transfer, the offender's extended jurisdiction juvenile status is terminated
and youth court jurisdiction is terminated. Ongoing supervision of the offender is with the district court's
adult probation services, rather than the youth court's juvenile probation services."

NEW SECTION. Section 10. Public safety. (1) In determining whether the public safety
is served by designating a case an extended jurisdiction juvenile prosecution, the court shall consider the
following factors:
 (a) the seriousness of the alleged offense in terms of community protection, including the existence
of any aggravating factors, the use of a firearm, and the impact on the victim;
 (b) the culpability of the youth in committing the alleged offense, including the level of the youth's
participation in planning and carrying out the offense and the existence of mitigating factors;
 (c) the youth's prior record of delinquency;
 (d) the youth's treatment history, including the youth's past willingness to participate meaningfully
in available treatment;
 (e) the adequacy of the dispositions available in the juvenile justice system; and
 (f) the dispositional options available for the youth.
 (2) In considering the factors listed in subsection (1), the court shall give greater weight to the
seriousness of the alleged offense and the youth's prior record of delinquency than to the other listed
factors.

NEW SECTION. Section 11. Proceedings - rights. A youth who is the subject of an
extended jurisdiction juvenile prosecution has the right to a trial by jury and to the effective assistance of

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(2) Except as provided in subsection (3), if a youth is prosecuted as an extended jurisdiction
prosecution juvenile after designation by the county attorney in the delinquency petition under
41-5-1102(1)(b) is convicted of an offense that is not an offense described in 41-5-1102(1)(b), the court
shall adjudicate the youth delinquent and order a disposition under 41-5-523.
 (3) if a youth in an extended jurisdiction juvenile prosecution pleads guilty to an offense that is not
described in 41-5-1102(1)(b) a felony, the court may impose, with the youth's consent, a disposition
provided under subsection (1)(b). If the youth does not consent to disposition under subsection (1)(b), the
court shall impose a disposition as provided under subsection (2) (1)(a)."

Section 9. Section 41-5-1105, MCA, is amended to read:
"41-5-1105. Execution Revocation of stay -- disposition of adult sentence--
exception--transfer to district court. (1) If a court has imposed on a youth an adult criminal
sentence stayed under 41-5-1104(1)(b) and the youth violates the conditions of the stay or is alleged to
have committed a new offense, the court may, without notice, direct that the youth be taken into
immediate custody and revoke the stay. The court shall notify the youth, the youth's counsel, and the
youth's parents, guardian, or custodian in writing of the reasons alleged to exist for the revocation of the
stay of execution of the adult sentence.

(2) (a) if the youth challenges the reasons for the revocation, the court shall hold a summary
revocation hearing at which the youth is entitled to receive, be heard and represented by counsel
(i) written notice of the alleged violation;
(ii) evidence of the alleged violation;
(iii) an opportunity to be heard in person and to present witnesses and evidence;
(iv) the right to cross-examine witnesses, unless the court finds good cause for not allowing
confrontation; and
(v) the right to counsel.

(b) After the revocation hearing, if the court finds by a preponderance of the evidence presented
that the conditions of the stay have been violated or that the youth has committed a new offense, the court
shall provide the youth with a written statement of the evidence relied on and reasons for revocation and
shall:

(i) continue the stay and place the youth on probation;

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1 counsel, as provided in 41-5-511.

2

3 NEW SECTION. Section 12. Enforcement of restitution orders. If the court orders
4 payment of restitution and the youth fails to pay the restitution in accordance with the payment schedule
5 or structure established by the court or probation officer, the youth's probation officer may, on the officer's
6 own motion or at the request of the victim, file a petition for violation of probation or ask the court to hold
7 a hearing to determine whether the conditions of probation should be changed. The probation officer shall
8 ask for a hearing if the restitution has not been paid prior to 60 days before the term of probation expires.
9 The court shall schedule and hold the hearing before the youth's term of probation expires.

10

11 NEW SECTION. Section 13. Codification instruction. (1) [Sections 10 and 11] are
12 intended to be codified as an integral part of Title 41, chapter 5, part 11, and the provisions of Title 41,
13 chapter 5, part 11, apply to [sections 10 and 11].

14 (2) [Section 12] is intended to be codified as an integral part of Title 41, chapter 5, part 5, and the
15 provisions of Title 41, chapter 5, part 5, apply to [section 12].

16

17 NEW SECTION. Section 14. Severability. If a part of [this act] is invalid, all valid parts
18 that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of
19 its applications, the part remains in effect in all valid applications that are severable from the invalid
20 applications.

21

22 NEW SECTION. Section 15. Effective date. [This act] is effective on passage and
23 approval.

24

25 NEW SECTION. Section 16. Applicability. [This act] applies to all offenses committed
26 on or after [the effective date of this act].

-END-

27

1 out-of-district placement of students with disabilities must be determined pursuant to Title 20, chapter 7,
2 part 4.

3 (5) Except as provided in subsection (8), when a child has approval to attend a school outside the
4 child's district of residence under the provisions of 20-5-320 or 20-5-321, the district of residence shall
5 finance the tuition amount from the district tuition fund and any transportation amount from the
6 transportation fund.

7 (6) When a child has mandatory approval under the provisions of 20-5-321, the tuition, and
8 transportation obligation for an elementary school child attending a school outside of the child's county of
9 residence must be financed by the county basic tax for elementary districts, as provided in 20-9-331, for
10 the child's county of residence or for a high school child attending a school outside the county of residence
11 by the county basic tax for high school districts, as provided in 20-9-333, for the child's county of
12 residence.

13 (7) By December 31 of the school fiscal year, the county superintendent or the trustees shall pay
14 at least one-half of any tuition and transportation obligation established under this section out of the money
15 realized to date from the appropriate basic county tax account provided for in 20-9-334 or from the district
16 tuition or transportation fund. The remaining tuition and transportation obligation must be paid by June 15
17 of the school fiscal year. The payments must be made to the county treasurer in each county with a school
18 district that is entitled to tuition and transportation. Except as provided in subsection (9), the county
19 treasurer shall credit tuition receipts to the general fund of a school district entitled to a tuition payment.
20 The tuition receipts must be used in accordance with the provisions of 20-9-141. The county treasurer shall
21 credit transportation receipts to the transportation fund of a school district entitled to a transportation
22 payment.

23 (8) The superintendent of public instruction shall reimburse the district of residence for the per-ANB
24 entitlement determined in subsection (3).

25 (9) (a) Any tuition receipts received under the provisions of ~~Title 20, chapter 7, part 4, or~~
26 20-5-323(3) for the current school fiscal year that exceed the tuition receipts of the prior year may be
27 deposited in the district miscellaneous programs fund and must be used for that year in the manner
28 provided for in 20-9-507 to support the costs of the program for which the tuition was received.

29 (b) Any tuition receipts received for the current school fiscal year for a pupil who is a child with
30 disabilities that exceed the tuition amount received for a pupil without disabilities may be deposited in the

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BILL NO. _____

1 INTRODUCED BY _____
2
3 BY REQUEST OF THE JUVENILE JUSTICE AND JUVENILE MENTAL HEALTH STUDY COMMISSION
4
5 A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING SPECIAL EDUCATION TUITION PAYMENTS IN
6 EXCESS OF REGULAR TUITION COSTS FOR AN OUT-OF-DISTRICT PUPIL TO BE USED FOR THE
7 PROGRAM IN WHICH THE SPECIAL EDUCATION PUPIL IS ENROLLED; AMENDING SECTIONS 20-5-324
8 AND 20-9-141, MCA; AND PROVIDING AN EFFECTIVE DATE."

9
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11
12 Section 1. Section 20-5-324, MCA, is amended to read:

13 "20-5-324. Tuition report and payment provisions. (1) At the close of the school term
14 of each school fiscal year and before July 15, the trustees of a district shall report to the county
15 superintendent:

16 (a) the name and district of residence of each child who is attending a school of the district under
17 an approved mandatory out-of-district attendance agreement;

18 (b) the number of days of enrollment for each child reported under the provisions of subsection
19 (1)(a);

20 (c) the annual tuition rate for each child's tuition payment, as determined under the provisions of
21 20-5-323, and the tuition cost for each reported child; and

22 (d) the names, districts of attendance, and amount of tuition to be paid by the district for resident
23 students attending public schools out of state.

24 (2) The county superintendent shall send, as soon as practicable, the reported information to the
25 county superintendent of the county in which a reported child resides.

26 (3) Before July 30, the county superintendent shall report the information in subsection (1)(d) to
27 the superintendent of public instruction, who shall determine the total per-ANB entitlement for which the
28 district would be eligible if the student were enrolled in the resident district. The reimbursement amount
29 is the difference between the actual amount paid and the amount calculated in this subsection.

30 (4) Notwithstanding the requirements of subsection (5), tuition payment provisions for

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1 district miscellaneous programs fund and must be used for that year in the manner provided for in 20-9-507
 2 to support the costs of the program for which the tuition was received.

3 (c) Any other tuition receipts received for the current school fiscal year that exceed the tuition
 4 receipts of the prior year may be deposited in the district miscellaneous programs fund and may be used
 5 for that year in the manner provided for in that fund. For the ensuing school fiscal year, the receipts must
 6 be credited to the district general fund budget."

7
 8 Section 2. Section 20-9-141, MCA, is amended to read:

9 "20-9-141. Computation of general fund net levy requirement by county
 10 superintendent. (1) The county superintendent shall compute the levy requirement for each district's
 11 general fund on the basis of the following procedure:

12 (a) Determine the funding required for the district's final general fund budget less the sum of direct
 13 state aid and the special education allowable cost payment for the district by totaling:

14 (i) the district's nonisolated school BASE budget requirement to be met by a district levy as
 15 provided in 20-9-303; and

16 (ii) any general fund budget amount adopted by the trustees of the district under the provisions
 17 of 20-9-308 and 20-9-353, including any additional funding for a general fund budget that exceeds the
 18 maximum general fund budget.

19 (b) Determine the money available for the reduction of the property tax on the district for the
 20 general fund by totaling:

21 (i) the general fund balance reappropriated, as established under the provisions of 20-9-104;

22 (ii) amounts received in the last fiscal year for which revenue reporting was required for each of
 23 the following:

24 (A) tuition payments for out-of-district pupils under the provisions of 20-5-321 through 20-5-323
 25 except the amount of tuition received for a pupil who is a child with disabilities in excess of the amount
 26 received for a pupil without disabilities, as calculated under 20-5-323(2);

27 (B) revenue from property taxes and fees imposed under 23-2-517, 23-2-803, 61-3-504(2),
 28 61-3-521, 61-3-527, 61-3-537, and 67-3-204;

29 (C) oil and natural gas production taxes;

30 (D) interest earned by the investment of general fund cash in accordance with the provisions of

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1 20-9-213(4);

2 (E) revenue from corporation license taxes collected from financial institutions under the provisions
 3 of 15-31-702; and

4 (F) any other revenue received during the school fiscal year that may be used to finance the general
 5 fund, excluding any guaranteed tax base aid; and

8 (iii) pursuant to subsection (4), anticipated revenue from coal gross proceeds under 15-23-703.

7 (c) Notwithstanding the provisions of subsection (2), subtract the money available to reduce the
 8 property tax required to finance the general fund that has been determined in subsection (1)(b) from any
 9 general fund budget amount adopted by the trustees of the district, up to the BASE budget amount, to
 10 determine the general fund BASE budget levy requirement.

11 (d) Subtract any amount remaining after the determination in subsection (1)(c) from any additional
 12 funding requirement to be met by an over-BASE budget amount, a district levy as provided in 20-9-303,
 13 and any additional financing as provided in 20-9-353 to determine any additional general fund levy
 14 requirements.

15 (2) The county superintendent shall calculate the number of mills to be levied on the taxable
 16 property in the district to finance the general fund levy requirement for any amount that does not exceed
 17 the BASE budget amount for the district by dividing the amount determined in subsection (1)(c) by the sum
 18 of:

19 (a) the amount of guaranteed tax base aid that the district will receive for each mill levied, as
 20 certified by the superintendent of public instruction; and

21 (b) the taxable valuation of the district divided by 1,000.

22 (3) The net general fund levy requirement determined in subsections (1)(c) and (1)(d) must be
 23 reported to the county commissioners on the fourth Monday of August by the county superintendent as
 24 the general fund net levy requirement for the district, and a levy must be set by the county commissioners
 25 in accordance with 20-9-142.

28 (4) For each school district, the department of revenue shall calculate and report to the county
 27 superintendent the amount of revenue anticipated for the ensuing fiscal year from revenue from coal gross
 28 proceeds under 15-23-703."

30 NEW SECTION. Section 3. Effective date. [This act] is effective July 1, 1997.

-END-

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NEW SECTION, Section 3. Effective date. [This act] is effective July 1, 1997.

-END-

1
2

BILL NO. _____

1 INTRODUCED BY _____
2
3 BY REQUEST OF THE JUVENILE JUSTICE AND JUVENILE MENTAL HEALTH STUDY COMMISSION
4
5 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING LOCAL EDUCATIONAL AGENCIES TO ADOPT A
6 POLICY FOR THE TRANSFERRING OF PERMANENT AND SPECIAL EDUCATIONAL RECORDS; AND
7 PROVIDING AN EFFECTIVE DATE."

8
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10
11 NEW SECTION, Section 1. Transfer of school records. (1) Subject to the provisions of the Family
12 Educational Rights and Privacy Act of 1974, 20 U.S.C. 1232g(b)(1)(E) and its implementing regulations at
13 34 CFR, part 99, and to the provisions of the Individuals With Disabilities Education Act, 20 U.S.C. 1411
14 through 1420, and its implementing regulations at 34 CFR, part 300, local educational agencies shall adopt
15 a policy that the permanent file and the file containing special education records of a student will be
16 forwarded to a local educational agency in which the student seeks or intends to enroll or a licensed
17 regional detention facility, as defined in 41-5-103, within 5 working days after a receipt of a written
18 request.

19 (2) The files must include regular education records, special education records, and any of the
20 following information that is in the student's records:

- 21 (a) special education tests;
- 22 (b) original immunization records;
- 23 (c) disciplinary information; and
- 24 (d) any relevant information on the student, including but not limited to information on
- 25 psychological tests or medical information.

26
27 NEW SECTION, Section 2. Codification instruction. [Section 1] is intended to be codified as an
28 integral part of Title 20, chapter 1, part 2, and the provisions of Title 20, chapter 1, part 2, apply to
29 [section 1].

30

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BILL NO. _____

1 INTRODUCED BY _____
 2 BY REQUEST OF THE JUVENILE JUSTICE AND MENTAL HEALTH STUDY COMMISSION
 3
 4
 5 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR A JUDICIAL DISTRICT JUVENILE PILOT
 8 PROJECT FOR A FAMILY-FOCUSED COURT SYSTEM AND COMMUNITY COORDINATION; CREATING
 7 YOUTH ASSESSMENT PLACEMENTS, FAMILY ASSESSMENTS, AND ASSESSMENT OFFICERS TO
 6 EVALUATE THE STRENGTHS AND NEEDS OF A YOUTH AND THE FAMILY OF A YOUTH BROUGHT TO
 9 THE ATTENTION OF YOUTH COURT; REQUIRING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN
 10 SERVICES TO LICENSE YOUTH ASSESSMENT PLACEMENTS; DEFINING "VICTIMS" AND OTHER TERMS;
 11 ALLOWING THE APPOINTMENT OF JUDGES PRO TEMPORE OR SPECIAL MASTERS FOR YOUTH COURT
 12 PRELIMINARY MATTERS; PROVIDING FOR YOUTH ASSESSMENT PLACEMENTS FOR PLACEMENTS PRIOR
 13 TO ADJUDICATION AND FOR DISPOSITION; PROVIDING CRITERIA FOR YOUTH ASSESSMENT
 14 PLACEMENTS; IDENTIFYING THE TYPES OF PLACEMENTS ALLOWED FOR ASSESSMENT; AMENDING
 15 SECTIONS 41-3-1102, 41-3-1103, 41-5-103, 41-5-201, 41-5-301, 41-5-303, 41-5-305, 41-5-308,
 18 41-5-401, 41-5-403, 41-5-522, AND 41-5-523, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE
 17 AND A TERMINATION DATE."

19 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

20
 21 NEW SECTION. Section 1. Short title. [Sections 1 through 9] may be cited as the
 22 "Family-Focused Court System and Community Coordination Pilot Project Act".

23
 24 NEW SECTION. Section 2. Purpose. (1) It is the purpose of [sections 1 through 9] to enable
 25 communities to better coordinate fragmented services to youth who are currently being served by many
 26 agencies and who are impacting the courts at varying levels. Youth who are coming into contact with the
 27 youth court have many needs that must be addressed in a coordinated way. A youth's issues must not
 28 be ignored until they come to the attention of the juvenile justice system for an alleged criminal offense,
 29 but must be addressed at the first indication of trouble. These first indications are often truancy, running
 30 away, and other offenses that are offenses because of the youth's age.

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1 (2) The legislature finds that balanced and restorative justice principles provide guidance for the
 2 purposes of the pilot projects provided for in [section 3] for holding youth accountable for their actions,
 3 providing protection to the community, and developing competency skills for youth and their families.
 4 (3) The legislature finds that a youth's parents and family are an integral part of a youth's life and
 5 that assessment of the strengths and needs of the family are vital in the assessment of the youth's
 8 strengths and needs.
 7 (4) The legislature finds that a fragmented system does not hold the youth accountable for the
 8 youth's actions, the family accountable for their responsibilities, or the state and local agencies accountable
 9 for their responsibilities. All agencies and the family need to work in concert to address the youth's
 10 problems.
 11 (5) The legislature finds that the pilot projects are intended to respect the unique needs of rural and
 12 urban counties and single-judge and multi-judge judicial districts and to provide for flexibility at the county
 13 level within the judicial district.

14
 15 NEW SECTION. Section 3. Judicial district juvenile pilot project for family-focused court system
 18 and community coordination. (1) There is a judicial district juvenile pilot project program. A pilot project
 17 is administered within a judicial district and must consist of:

18 (a) a community team providing a single point of entry for youth, including but not limited to
 19 delinquent youth, youth in need of supervision, and abused or neglected youth;
 20 (b) a youth assessment program to coordinate youth assessment placements;
 21 (c) a family assessment coordination team; and
 22 (d) a judge pro tempore, special master, or research assistant.
 23 (2) There may be more than one pilot project.

24 (3) A community team shall designate a youth assessment program, including the location where
 25 all youth are taken upon referral and the location for youth assessment placements. A youth assessment
 26 program may be staffed for up to 24 hours a day. A community team shall develop procedures for a youth
 27 assessment program including:

28 (a) a preliminary screening;
 29 (b) an in-depth assessment, if the preliminary screening determines a need;
 30 (c) assignment of a child to a family assessment coordination team; and

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- 1 (d) Immediate notification of parents upon referral of a child.
- 2 (4) A family assessment coordination team is a multidisciplinary team of community professionals
- 3 and families that meet on a regular basis to assess, plan, and staff the needs of referred youth.
- 4 (5) A community team shall operate within the parameters established in the written cooperative
- 5 agreement of agencies as provided in section 51.

6 **NEW SECTION. Section 4.** Community team -- authority -- duties and responsibilities. (1) Each

7 judicial district that participates in the pilot project shall designate a community team.

- 8 (2) The members of a community team must include:
- 9 (a) a chief juvenile probation officer or designee;
- 10 (b) a representative of the department of corrections;
- 11 (c) a representative of the school district;
- 12 (d) a child protective services representative of the department of public health and human
- 13 services;
- 14 (e) a representative of the public mental health program;
- 15 (f) a representative of law enforcement; and
- 16 (g) a person, preferably an Indian, knowledgeable about Indian culture and family matters, including
- 17 but not limited to a representative from a tribal court or reservation or an Indian representative from the
- 18 community.

19 (3) Other members may be added to the community team by majority vote.

20 (4) A member of a community team who represents an agency must be authorized by the agency

21 to commit resources and make decisions on behalf of the agency.

22 (5) The community team may be a county interdisciplinary child information team, as provided in

23 52-2-211, or a local interagency staffing group, as provided in 52-2-203, if the members listed in

24 subsection (2) of this section who are not represented on any group are added to the team and the written

25 agreement is entered into for the purposes of the pilot project.

26 (6) The community team is responsible for:

- 27 (a) developing and approving a written cooperative agreement as provided in section 51;
- 28 (b) determining the location of the youth assessment program;
- 29 (c) coordinating funding and decisionmaking for the implementation of the recommendations of the

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- 1 family assessment coordination teams; and
- 2 (d) coordinating victim programs and involvement.

3 **NEW SECTION. Section 5.** Written cooperative agreement. (1) All members of a community team

4 shall sign a written cooperative agreement.

5 (2) The written cooperative agreement must include:

- 6 (a) a defined commitment from each member of staff time and types of resources to be devoted
- 7 to the support of the community team and family assessment coordination teams;
- 8 (b) defined responsibilities of each agency represented on the community team;
- 9 (c) flexible funding strategies, pooling of resources, and strategies for the provision of services to
- 10 the youth as expeditiously as possible;
- 11 (d) a determination of which youth are eligible for referral and from which agencies youth may be
- 12 referred;
- 13 (e) a listing of resources that the family assessment coordination teams can access to provide
- 14 services to the youth and to the family;
- 15 (f) policies and procedures to provide the greatest possible involvement of parents and families in
- 16 the assessment process;
- 17 (g) policies and procedures to address the concerns and wishes of parents and families;
- 18 (h) provisions for recognizing the rights of victims and the procedures by which the concerns of
- 19 victims will be addressed and by which victims will be included in information sharing; and

20 (i) a commitment to incorporate the principles of community protection, youth accountability, and

21 competency development in the pilot project and an explanation of how the principles will be incorporated.

22 (3) The terms of the written agreement must state how the community team and its family

23 assessment coordination teams will coordinate their efforts with the county interdisciplinary child

24 information teams as provided in 52-2-211, interdisciplinary child protective teams as provided in 41-3-108,

25 youth placement committees as provided in 41-5-525, and court-appointed special advocates. A written

26 agreement under this section may be coordinated with a cooperative agreement as provided in 52-2-203.

27 (4) For purposes of this section, the youth court is designated as the lead agency in coordinating

28 a written agreement for the purposes of developing a community team and family assessment coordination

29 teams.

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1 NEW SECTION. Section 6. Family assessment coordination teams -- duties. (1) Each community
2 team is responsible for appointing one or more family assessment coordination teams.

3 (2) The members of a family assessment coordination team must be representatives from each
4 state and local agency that the youth or the youth's family is involved with from the groups represented
5 on the community team.

6 (3) The leader of the family assessment coordination team is the member from the agency that first
7 had contact with the youth or the member from the agency that received the most recent referral,
8 whichever the community team designates.

9 (4) The family assessment coordination team may be:

10 (a) a youth placement committee, as provided in 41-5-525;

11 (b) an interdisciplinary child protective team, as provided in 41-3-108; or

12 (c) an auxiliary team of the county interdisciplinary child information team, as provided in 52-2-211.

13 (5) The family assessment coordination team is responsible for:

14 (a) the overall administration of the youth assessment program and designation of the agency with
15 administrative duties;

16 (b) meeting on a regular basis to assess, plan for, and staff the needs of the youth referred to the
17 pilot project;

18 (c) assisting the youth court and other state and local agencies in determining the most appropriate
19 disposition for a youth in order to hold the youth accountable, to protect the community, and to give the
20 youth the opportunity to develop competency skills that address the youth's and the youth's family's
21 strengths and needs.

22
23 NEW SECTION. Section 7. Referrals to pilot project. (1) Any agency that is a member of a
24 community team may refer a youth to a youth assessment program.

25 (2) A parent or school representative may refer a youth who appears to be a youth in need of
26 supervision, as defined in 41-5-103, to a youth assessment program for preliminary screening by an
27 assessment officer. The family assessment coordination team must determine whether the youth qualifies
28 for in-depth assessment.

29 (3) The procedures for referral from an agency represented on a community team and for referral
30 from a parent must be set forth in a written cooperative agreement. Provisions must be made for after-hour

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1 referrals if the youth assessment program is not open 24 hours a day.

2 (4) When a referral is made by any person other than a youth's parent or legal guardian, the parent
3 or legal guardian must be notified immediately. Every attempt must be made to involve a parent in the
4 process. If the parent refuses to participate, the family assessment coordination team shall proceed with
5 the process for assessment and disposition as provided in 41-5-301, shall report their findings to the
6 parents, and shall place a report of the parental notification and response in the youth's file.

7
8 NEW SECTION. Section 8. Courts. (1) (a) If a child is referred to a youth assessment program
9 through a city court, municipal court, justice's court, or youth court for any reason, the district court may
10 assign a judge pro tempore or special master, as provided in 41-5-201, to assist the community team.

11 (b) A judge pro tempore or special master appointed for the purpose of the judicial district juvenile
12 pilot project must have education or experience in human services.

13 (c) A district court may appoint a research assistant with education or experience in human
14 services to assist a community team.

15 (2) In a judicial district with more than one judge, all court actions, such as dissolution of marriage,
16 child support, child protective services, and youth court proceedings, involving a family member must be
17 assigned to a single judge, judge pro tempore, or special master.

18 (3) All charges from a single incident involving a youth must be assigned to the same court.
19 Notification procedures between courts must be developed by the community team.

20 (4) The judicial district juvenile pilot project may be coordinated with the court assessment project
21 administered through the supreme court.

22
23 NEW SECTION. Section 9. Administration -- oversight -- procedures. (1) Subject to the availability
24 of funds, the crime control division of the department of justice shall establish a request for proposal
25 process to allow judicial districts to apply for the judicial district juvenile pilot project. If more than one pilot
26 project is pursued, the allocation of pilot projects must be evenly divided between urban and rural judicial
27 districts. A multijudge judicial district must be considered an urban judicial district. A single-judge judicial
28 district must be considered a rural judicial district.

29 (2) The request for proposals must require the submittal of all of the information to be included in
30 a written cooperative agreement under (section 5) and letters of support from the county commissioners

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(8) "Respite care" means the provision of temporary, short-term supervision or care of a foster child, in an emergency or on an intermittent basis, to provide foster parents relief from the daily care requirements of a foster child whose mental or physical condition requires special or intensive supervision or care. Respite care includes but is not limited to homemaker services, child care, and emergency care either in the home or out of the home.

(7) "Respite care provider" means a person who meets the qualifications and requirements established by the department to provide respite care under 41-3-1151.

(8) "Substitute care" means full-time care of youth in a residential setting for the purpose of providing food, shelter, security and safety, guidance, direction, and if necessary, treatment to youth who are removed from or without the care and supervision of their parents or guardian.

(9) "Youth assessment placement" has the meaning provided in 41-5-103.

(10) "Youth care facility" means a facility licensed by the department or by the appropriate licensing authority in another state and in which facility substitute care is provided to youth. The term includes youth foster homes, youth group homes, and child-care agencies, and youth assessments placements.

(11) "Youth foster home" means a youth care facility in which substitute care is provided to one to six children or youth other than the foster parents' own children, stepchildren, or wards.

(12) "Youth group home" means a youth care facility in which substitute care is provided to 7 to 12 children or youth.

Section 11. Section 41-3-1103, MCA, is amended to read:

"41-3-1103. Powers and duties of department. (1) The department shall:

- (a) administer all state and federal funds allocated to the department for youth foster homes, youth group homes, and child-care agencies, and youth assessment placements for youth in need of care, as defined in 41-5-103 41-3-102;
- (b) exercise licensing authority over licensing all youth foster homes, youth group homes, and child-care agencies, and youth assessment placements;
- (c) collect and disseminate information relating to youth in need of care;
- (d) provide for training of program personnel delivering services;
- (e) in cooperation with youth care facility providers, develop and implement standards for youth

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of the counties and the district court judges in a judicial district.

(3) The crime control division shall oversee the program and upon termination of the pilot project shall prepare a report to the governor, the legislature, and the public regarding the success of each pilot project as measured by:

- (a) the members of the community team;
- (b) the members of the family assessment coordination team;
- (c) youth and families involved in the pilot project;
- (d) a summary enumerating the youth who entered the pilot project, the disposition of the youth's cases, the services rendered to the youth, and the progress of the youth at annual increments following disposition.

(4) The crime control division is responsible for coordinating the development of a preliminary screening instrument and in-depth assessment guidelines and procedures with the department of corrections and the department of public health and human services based on existing tools and resources and for providing that information to each judicial district that is awarded a pilot project.

Section 10. Section 41-3-1102, MCA, is amended to read:

"41-3-1102. Definitions. For the purposes of this part, the following definitions apply:

- (1) "Child-care agency" means a youth care facility in which substitute care is provided to 13 or more children or youth.
- (2) "Department" means the department of public health and human services provided for in 2-15-2201.
- (3) "Foster child" means a person under 18 years of age who has been placed by the department in a licensed youth foster home.
- (4) "Operator of a youth care facility" means a person owning or operating a youth care facility into which the operator takes any child or children for the purpose of caring for them and maintaining them and for which care and maintenance the operator receives money or other consideration of value and which child is neither the operator's son, daughter, nor ward, except that this part does not apply when any person accepts the care and custody of a child on a temporary basis and simply as a temporary accommodation for the parent or parents, guardian, or relative of the child.
- (5) "Person" means any individual, partnership, voluntary association, or corporation.

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1 care facilities;

2 (f) maintain adequate data on placements it funds in order to keep the legislature properly informed

3 of the following:

4 (i) the number of youth in need of care in out-of-home care facilities;

5 (ii) the cost per facility for services rendered;

6 (iii) the type and level of care of services provided by each facility;

7 (iv) a profile of out-of-home care placements by level of care; and

8 (v) a profile of public institutional placements; and

9 (g) administer all funds allocated to the department for residential alcohol and drug abuse treatment

10 for indigent youth in need of care, indigent youth in need of supervision, and indigent

11 delinquent youth who require treatment.

12 (2) The department may:

13 (a) enter into contracts with nonprofit corporations or associations or private organizations to

14 provide substitute care for youth in need of care in youth care facilities;

15 (b) accept gifts, grants, and donations of money and property from public and private sources to

16 initiate and maintain community-based services to youth;

17 (c) adopt rules to carry out the administration and purposes of this part.

18 (3) The department shall pay for room, board, clothing, personal needs, transportation, and

19 treatment in youth foster care homes and youth group homes for youth committed to the

20 department who need to be placed in the facilities. Payments for the clothing of a child placed in a youth

21 foster home must be provided to the extent the child needs a basic wardrobe or has a special clothing need.

22 Payments under this subsection may not exceed appropriations for the purposes of this subsection."

23

24 Section 12. Section 41-5-103, MCA, is amended to read:

25 "41-5-103. Definitions. As used in the Montana Youth Court Act, unless the context requires

26 otherwise, the following definitions apply:

27 (1) "Adult" means an individual who is 18 years of age or older.

28 (2) "Agency" means any entity of state or local government authorized by law to be responsible

29 for the care or rehabilitation of youth.

30 (3) "Assessment officer" means a person who is authorized by the court to provide initial intake

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1 and evaluation for a youth who appears to be in need of supervision as indicated by:

2 (a) the commission of an offense that would not be a criminal offense if committed by an adult; and

3 (b) referral from a parent or guardian, a school representative, or a law enforcement officer.

4 (4)(4) "Commit" means to transfer to legal custody.

5 (4)(5) "Correctional facility" means a public or private residential facility used for the placement

6 of delinquent youth or individuals convicted of criminal offenses.

7 (4)(6) "Court", when used without further qualification, means the youth court of the district court.

8 (4)(7) "Custodian" means a person, other than a parent or guardian, to whom legal custody of the

9 youth has been given but does not include a person who has only physical custody.

10 (4)(8) "Delinquent youth" means a youth:

11 (a) who has committed an offense that, if committed by an adult, would constitute a criminal

12 offense; or

13 (b) who, having been placed on probation as a delinquent youth or a youth in need of supervision,

14 violates any condition of probation.

15 (4)(9) "Department" means the department of corrections provided for in 2-15-2301.

16 (4)(10) "Detention" means the holding or temporary placement of a youth in the youth's home

17 under home arrest or in a facility other than the youth's own home for the purpose of ensuring the

18 continued custody of the youth at any time after the youth is taken into custody and before final disposition

19 of the youth's case.

20 (4)(11) "Detention facility" means a physically restricting facility designed to prevent a youth from

21 departing at will. The term includes a youth detention facility, short-term detention center, and regional

22 detention facility.

23 (12) "Family" means the parents, guardians, legal custodians, and siblings of other youth with

24 whom a youth ordinarily lives.

25 (13) "Family assessment" means an evaluation and assessment of a youth and a youth's family's

26 strengths and needs as determined through a multidisciplinary evaluation, including but not limited to a

27 chemical dependency evaluation, an education assessment, a mental health evaluation using the public

28 mental health program, family-based services, and other services provided by the department of public

29 health and human services or other state and local agencies.

30 (4)(14) "Final disposition" means the implementation of a court order for the disposition or

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1 placement of a youth as provided in 41-5-523.

2 ~~(4-2)(15)~~ "Foster home" means a private residence licensed by the department of public health and

3 human services for placement of a youth.

4 ~~(4-2)(16)~~ "Guardianship" means the status created and defined by law between a youth and an adult

5 with the reciprocal rights, duties, and responsibilities.

6 ~~(4-4)(17)~~ "Holdover" means a room, office, building, or other place approved by the board of crime

7 control for the temporary detention and supervision of youth in a physically unrestricting setting for a period

8 not to exceed 24 hours while the youth is awaiting a probable cause hearing, release, or transfer to an

9 appropriate detention or shelter care facility. The term does not include a jail.

10 ~~(4-5)(18)~~ "Jail" means a facility used for the confinement of adults accused or convicted of criminal

11 offenses. The term includes a lockup or other facility used primarily for the temporary confinement of adults

12 after arrest.

13 ~~(4-8)(19)~~ "Judge", when used without further qualification, means the judge of the youth court.

14 ~~(4-2)(20)~~ (a) "Legal custody" means the legal status created by order of a court of competent

15 jurisdiction that gives a person the right and duty to:

16 (i) have physical custody of the youth;

17 (ii) determine with whom the youth shall live and for what period;

18 (iii) protect, train, and discipline the youth; and

19 (iv) provide the youth with food, shelter, education, and ordinary medical care.

20 (b) An individual granted legal custody of a youth shall personally exercise the individual's rights

21 and duties as guardian unless otherwise authorized by the court entering the order.

22 ~~(4-8)(21)~~ "Necessary parties" includes the youth, and the youth's parents, guardian, custodian, or

23 spouse.

24 ~~(4-8)(22)~~ "Parent" means the natural or adoptive parent but does not include a person whose

25 parental rights have been judicially terminated, nor does it include the putative father of an illegitimate youth

26 unless the putative father's paternity is established by an adjudication or by other clear and convincing

27 proof.

28 ~~(4-9)(23)~~ "Probable cause hearing" means the hearing provided for in 41-5-303.

29 ~~(4-2)(24)~~ "Regional detention facility" means a youth detention facility established and maintained

30 by two or more counties, as authorized in 41-5-811.

1 ~~(4-2)(25)~~ "Restitution" means payments in cash to the victim or with services to the victim or the

2 general community when these payments are made pursuant to an informal adjustment, consent decree,

3 or other youth court order.

4 ~~(4-2)(26)~~ "Secure detention facility" means any public or private facility that:

5 (a) is used for the temporary placement of youth or individuals accused or convicted of criminal

6 offenses; and

7 (b) is designed to physically restrict the movements and activities of youth or other individuals held

8 in lawful custody of the facility.

9 ~~(4-4)(27)~~ "Serious juvenile offender" means a youth who has committed an offense that would be

10 considered a felony offense if committed by an adult and that is an offense against a person, an offense

11 against property, or an offense involving dangerous drugs.

12 ~~(4-5)(28)~~ "Shelter care" means the temporary substitute care of youth in physically unrestricting

13 facilities.

14 ~~(4-6)(29)~~ "Shelter care facility" means a facility used for the shelter care of youth. The term is

15 limited to the facilities enumerated in 41-5-306(1)(g).

16 ~~(4-7)(30)~~ "Short-term detention center" means a detention facility licensed by the department for

17 the temporary placement or care of youth, for a period not to exceed 98 hours, pending a probable cause

18 hearing, release, or transfer of the youth to an appropriate detention facility, youth assessment placement,

19 or shelter care facility.

20 ~~(4-8)(31)~~ "State youth correctional facility" means a residential facility used for the placement and

21 rehabilitation of delinquent youth, such as the Pine Hills school in Miles City and the Mountain View school

22 in Helena.

23 ~~(4-9)(32)~~ "Substitute care" means full-time care of youth in a residential setting for the purpose of

24 providing food, shelter, security and safety, guidance, direction, and, if necessary, treatment to youth who

25 are removed from or are without the care and supervision of their parents or guardian.

26 (33) "Victim" means:

27 (a) a person who suffers property loss or damage, physical injury, or emotional injury as the result

28 of an offense committed by a youth that would be a felony offense if committed by an adult;

29 (b) an adult relative of the victim if the victim is a minor;

30 (c) an adult relative of a homicide victim.

1 ~~(20)(34)~~ "Youth" means an individual who is less than 18 years of age without regard to sex or
2 emancipation.

3 ~~(35)~~ "Youth assessment placement" means a staff-secured location licensed by the department of
4 public health and human services in which a youth may be held for up to 10 days to ascertain the youth's
5 and the youth's family's strengths and needs, including but not limited to an assessment related to mental
6 health, chemical dependency, and abuse and neglect.

7 ~~(36)~~ "Youth care facility" has the meaning provided in 41-3-1102.

8 ~~(21)(37)~~ "Youth court" means the court established pursuant to this chapter to hear all proceedings
9 in which a youth is alleged to be a delinquent youth, a youth in need of supervision, or a youth in need of
10 care and includes the youth court judge and probation officers.

11 ~~(22)(38)~~ "Youth detention facility" means a secure detention facility licensed by the department for
12 the temporary substitute care of youth that:

13 (a) is operated, administered, and staffed separately and independently of a jail; and

14 (b) is used exclusively for the lawful detention of alleged or adjudicated delinquent youth.

15 ~~(23)(39)~~ "Youth in need of care" has the meaning provided for in 41-3-102.

16 ~~(24)(40)~~ "Youth in need of supervision" means a youth who commits an offense prohibited by law
17 that, if committed by an adult, would not constitute a criminal offense, including but not limited to a youth
18 who:

19 (a) violates any Montana municipal or state law regarding use of alcoholic beverages, tobacco
20 products, or gambling by minors;

21 (b) continues to exhibit behavior, including running away from home or habitual truancy, beyond
22 the control of the youth's parents, foster parents, physical custodian, or guardian despite the attempt of
23 the youth's parents, foster parents, physical custodian, or guardian to exert all reasonable efforts to
24 mediate, resolve, or control the youth's behavior; or

25 (c) has committed any of the acts of a delinquent youth but whom the youth court, in its
26 discretion, chooses to regard as a youth in need of supervision."

27
28 Section 13. Section 41-5-201, MCA, is amended to read:

29 "41-5-201. Youth court judge -- judges pro tempore -- special masters. (1) Each judicial district
30 in the state ~~shall~~ must have at least one judge of the youth court ~~the~~ whose duties shall be as to:

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1 (a) appoint and supervise qualified personnel to staff the youth division probation departments
2 within the judicial district;

3 (b) conduct hearings on youth court proceedings under this chapter;

4 (c) perform any other functions consistent with the legislative purpose of this chapter.

5 (2) In each multijudge judicial district the judges shall, by court rule, designate one or more of their
6 number to act as youth court judge in each county in the judicial district for a fixed period of time. Service
7 as youth court judge may be rotated among the different judges of the judicial district and among the
8 individual counties within the judicial district for given periods of time. Continuity of service of a given judge
9 as youth court judge and continuity in the operation and policies of the youth court in the county having
10 the largest population in the judicial district ~~shall~~ must be the principal consideration of the rule.

11 (3) (a) A youth court judge may appoint a judge pro tempore or a special master to conduct
12 preliminary, nondispositive matters, including but not limited to hearings for probable cause or detention
13 and taking of responses for petitions.

14 (b) A judge pro tempore or special master must be a member of the state bar of Montana."

15
16 Section 14. Section 41-5-301, MCA, is amended to read:

17 "41-5-301. Preliminary investigation and disposition. (1) Whenever the court receives information
18 from any agency or person, based upon reasonable grounds, that a youth is or appears to be a delinquent
19 youth or a youth in need of supervision or ~~being~~ that the youth is subject to a court order or consent order
20 and has violated the terms of ~~an~~ the order, a probation officer or assessment officer shall make a
21 preliminary inquiry into the matter.

22 (2) The probation officer or assessment officer may:

23 (a) require the presence of any person relevant to the inquiry;

24 (b) request subpoenas from the judge to accomplish this purpose;

25 (c) require investigation of the matter by any law enforcement agency or any other appropriate
26 state or local agency.

27 (3) If the probation officer or assessment officer determines that the facts indicate that the youth
28 is a youth in need of care, the matter must be immediately referred to the department of public health and
29 human services.

30 (4) (a) The probation officer or assessment officer in the conduct of the preliminary inquiry shall:

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(7) A petition charging a youth held in detention or in a youth assessment placement must be filed within 7 working days from the date the youth was first taken into custody or the petition must be dismissed and the youth released unless good cause is shown to further detain the youth.

(8) If a petition is not filed under this section, the complainant and victim, if any, must be informed by the probation officer or assessment officer of the action and the reasons for not filing and must be advised of the right to submit the matter to the county attorney for review. The county attorney, upon receiving a request for review, shall consider the facts, consult with the probation officer or assessment officer, and make the final decision as to whether a petition is filed."

Section 15. Section 41-5-303, MCA, is amended to read:

"41-5-303. Rights of youth taken into custody -- questioning -- hearing for probable cause -- detention. (1) When a youth is taken into custody for questioning upon a matter that could result in a petition alleging that the youth is either a delinquent youth or a youth in need of supervision or the youth is in a youth assessment placement, the following requirements must be met:

- (a) The youth must be advised of the the youth's right against self-incrimination and the youth's right to counsel.
- (b) The youth may waive these rights under the following situations:
 - (i) when the youth is 16 years of age or older, the youth may make an effective waiver;
 - (ii) when the youth is under the age of 16 years or age and the youth and a parent or guardian agree, they may make an effective waiver; and
 - (iii) when the youth is under the age of 16 years or age and the youth and the youth's parent or guardian do not agree, the youth may make an effective waiver only with advice of counsel.
- (c) The investigating officer, probation officer, assessment officer, or person assigned to give notice shall immediately notify the parents, guardian, or legal custodian of the youth that the youth has been taken into custody, the reasons for taking the youth into custody, and where the youth is being held. If the parents, guardian, or legal custodian cannot be found through diligent efforts, a close relative or friend chosen by the youth must be notified.
- (2) Unless a youth has been released, a hearing must be held within 24 hours after the youth is taken into custody, excluding weekends and legal holidays, to determine whether there is probable cause to believe that the youth is a delinquent youth or a youth in need of supervision.

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(i) advise the youth of the youth's rights under this chapter and the constitutions of the state of Montana and the United States;

(ii) determine whether the matter is within the jurisdiction of the court;

(iii) determine, if the youth is in detention, a youth assessment placement, or shelter care, whether detention, youth assessment, or shelter care should be continued or modified based upon criteria set forth in 41-5-305.

(b) Once relevant information is secured, the probation officer or assessment officer shall:

- (i) determine whether the interest of the public or the youth requires that further action be taken;
- (ii) terminate the inquiry upon the determination that no further action be taken; and
- (iii) release the youth immediately upon the determination that the filing of a petition is not authorized.

(5) The probation officer or assessment officer upon determining that further action is required may:

- (a) provide counseling, refer the youth and the youth's parents family to another agency providing appropriate services, or take any other action or make any informal adjustment that does not involve probation or detention;
- (b) provide for treatment or adjustment involving probation or other disposition authorized under 41-5-401 through 41-5-403 if the treatment or adjustment is voluntarily accepted by the youth's parents or guardian and the youth, if the matter is referred immediately to the county attorney for review, and if the probation officer or assessment officer proceeds no further unless authorized by the county attorney;

or

(c) refer the matter to the county attorney for filing a petition to order placement of a youth in a youth assessment placement for up to 10 days for further evaluation of the youth and the youth's family;

or

(d) refer the matter to the county attorney for filing a petition charging the youth to be a delinquent youth or a youth in need of supervision.

(6) The county attorney may apply to the youth court for permission to file a petition charging a youth to be a delinquent youth or a youth in need of supervision. The application must be supported by evidence that the youth court may require. If it appears that there is probable cause to believe that the allegations of the petition are true, the youth court shall grant leave to file the petition.

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1 (3) The probable cause hearing required under subsection (2) may be held by the youth court, a
 2 justice of the peace, a municipal or city judge, or a magistrate having jurisdiction in the case as provided
 3 in 41-5-203. If the probable cause hearing is held by a justice of the peace, a municipal or city judge, or
 4 a magistrate, a record of the hearing must be made by a court reporter or by a tape recording of the
 5 hearing.
 6 (4) At the probable cause hearing, the youth must be informed of ~~his~~ the youth's constitutional
 7 rights and ~~his~~ the youth's rights under this chapter.

8 (5) A parent, guardian, or legal custodian of the youth may be held in contempt of court for failing
 9 to be present at or to participate in the probable cause hearing unless ~~he~~ the parent, guardian, or legal
 10 custodian:

11 (a) cannot be located through diligent efforts of the investigating peace officer or peace officers;
 12 or

13 (b) is excused by the court for good cause.

14 (6) At the probable cause hearing, a guardian ad litem may be appointed as provided in 41-5-512.

15 (7) If it is determined that there is probable cause to believe the youth is a delinquent youth or is
 16 a youth in need of supervision, the court having jurisdiction in the case shall determine whether the youth
 17 should be retained in custody. If the court determines that continued custody of the youth is necessary and
 18 if the youth meets the criteria in 41-5-305, the youth may be placed in a detention facility, a youth
 19 assessment placement, or a shelter care facility as provided in 41-5-306 but may not be placed in a jail or
 20 other facility used for the confinement of adults accused or convicted of criminal offenses.

21 (8) If probable cause is not found or if a probable cause hearing is not held within the time specified
 22 in subsection (2), the youth must be immediately released from custody."

24 Section 16. Section 41-5-305, MCA, is amended to read:

25 "41-5-305. Criteria for placement of youth in secure detention facilities, youth assessments
 26 placements, or shelter care facilities. (1) A youth may not be placed in a secure detention facility unless:

27 (a) ~~he~~ the youth has allegedly committed an act that if committed by an adult would constitute a
 28 criminal offense and the alleged offense is one specified in 41-5-208;

29 (b) ~~he~~ the youth is alleged to be a delinquent youth and:

30 (i) ~~he~~ the youth has escaped from a correctional facility or secure detention facility;

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1 (iii) ~~he~~ the youth has violated a valid court order or an aftercare agreement;

2 (iiii) ~~he~~ the youth's detention is required to protect persons or property;

3 (iv) ~~he~~ the youth has pending court or administrative action or is awaiting a transfer to another
 4 jurisdiction and may abscond or be removed from the jurisdiction of the court;

5 (v) there are not adequate assurances that ~~he~~ the youth will appear for court when required; or

6 (vi) ~~he~~ the youth meets additional criteria for secure detention established by the youth court in the

7 judicial district that has current jurisdiction over ~~him~~ the youth; or

8 (c) ~~he~~ the youth has been adjudicated delinquent and is awaiting final disposition of ~~his~~ the youth's

9 case.

10 (2) A youth may not be placed in a shelter care facility unless:

11 (a) the youth and ~~his~~ the youth's family need shelter care to address their problematic situation
 12 when it is not possible for the youth to remain at home;

13 (b) the youth needs to be protected from physical or emotional harm;

14 (c) the youth needs to be deterred or prevented from immediate repetition of ~~his~~ the youth's
 15 troubling behavior;

16 (d) shelter care is necessary to assess the youth and ~~his~~ the youth's environment;

17 (e) shelter care is necessary to provide adequate time for case planning and disposition; or

18 (f) shelter care is necessary to intervene in a crisis situation and provide intensive services or
 19 attention that might alleviate the problem and reunite the family.

20 (3) A youth may not be placed in a youth assessment placement unless:

21 (a) the youth meets the requirements for placement in shelter care;

22 (b) the youth has not committed an act that would be a felony offense if committed by an adult;

23 (c) the youth needs an alternative, staff-secured site for evaluation and assessment of the youth
 24 and the youth's family's need for services;

25 (d) the youth needs to be held accountable for the youth's actions with structured programming;

28 and

27 (e) the youth meets qualifications as outlined by the placement guidelines that are determined by
 28 the department and coordinated with the guidelines used by the youth placement committees."

30 Section 17. Section 41-5-308, MCA, is amended to read:

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1 "41-5-306. Place of shelter care, youth assessment, or detention. (1) After a probable cause
 2 hearing provided for in 41-5-303, a youth alleged to be a youth in need of supervision may be placed only:
 3 (a) in a licensed youth foster home as defined in 41-3-1102;
 4 (b) in a facility operated by a licensed child welfare agency;
 5 (c) in a licensed youth group home as defined in 41-3-1102; or
 6 (d) in a licensed youth care facility as defined in 41-3-1102;
 7 (b) in a youth assessment placement; or
 8 (c) under home arrest, with or without a monitoring device, either in the youth's own home or
 9 in one of the facilities described in subsections (1)(a) through (1)(d) a licensed youth care facility, as
 10 provided in Title 46, chapter 18, part 10.
 11 (2) A youth alleged to be a youth in need of care may be placed only in the facilities listed in
 12 subsection (1) by the department of public health and human services as provided in Title 41, chapter 3,
 13 and may not be placed in a youth assessment placement or in a jail or other facility intended or used for
 14 the confinement of adults accused or convicted of criminal offenses.
 15 (3) After a probable cause hearing provided for in 41-5-303, a youth alleged to be a delinquent
 16 youth may be placed only:
 17 (a) in the facilities described in subsection (1);
 18 (b) under home arrest as provided in subsection (1);
 19 (c) in a short-term detention center;
 20 (d) in a youth detention facility; or
 21 (e) in a community youth court program."

22 Section 18. Section 41-5-401, MCA, is amended to read:

23 "41-5-401. Consent adjustment without petition. (1) Before a petition is filed, the probation officer
 24 or an assessment officer may enter into an informal adjustment and give counsel and advice to the youth,
 25 the youth's family, and other interested parties if it appears that:

- 26 (a) the admitted facts bring the case within the jurisdiction of the court;
- 27 (b) counsel and advice without filing a petition would be in the best interests of the child, the
 28 family, and the public; and
- 29 (c) the youth may be a youth in need of supervision and if the probation officer believes that the
 30

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1 parents, foster parents, physical custodian, or guardian exerted all reasonable efforts to mediate, resolve,
 2 or control the youth's behavior and the youth continues to exhibit behavior beyond the control of the
 3 parents, foster parents, physical custodian, or guardian.

4 (2) If a petition to order placement of a youth in a youth assessment placement under 41-5-301
 5 is granted, a consent adjustment without petition may be entered into after the assessment period is
 6 completed and before a petition or consent decree is filed.

7 (3) Any probation or other disposition imposed under this section against any youth must conform
 8 to the following procedures:

9 (a) Every consent adjustment shall must be reduced to writing and signed by the youth and his the
 10 youth's parents or the person having legal custody of the youth.

11 (b) If the probation officer believes the youth is a youth in need of supervision, the probation officer
 12 or assessment officer shall determine that the parents, foster parents, physical custodian, or guardian
 13 exerted all reasonable efforts to mediate, resolve, or control the youth's behavior and the youth continues
 14 to exhibit behavior beyond the control of the parents, foster parents, physical custodian, or guardian.

15 (c) Approval by the youth court judge is required if the complaint alleges commission of a felony
 16 or if the youth has been or will be in any way detained."

17 Section 19. Section 41-5-403, MCA, is amended to read:

18 "41-5-403. Disposition permitted under informal adjustment -- contributions by parents or
 19 guardians for youth's care. (1) The following dispositions may be imposed by informal adjustment:

20 (a) probation;

21 (b) placement of the youth in substitute care in a youth care facility, as defined in 41-3-1102, and
 22 as determined by the department pursuant to recommendations made by a youth placement committee
 23 referred to in 41-5-525;

24 (c) placement of the youth with a private agency responsible for the care and rehabilitation of the
 25 youth as determined by the department pursuant to recommendations made by a youth placement
 26 committee referred to in 41-5-525;

27 (d) restitution upon approval of the youth court judge;

28 (e) placement of the youth under home arrest as provided in Title 46, chapter 18, part 10;

29 (f) a requirement that the youth, the youth's parents, guardians, or family, or the persons having
 30

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1 legal custody of the youth receive counseling services:

2 (a) placement in youth assessment placement for up to 10 days.

3 (2) In determining whether restitution is appropriate in a particular case, the following factors may
4 be considered in addition to any other evidence:

5 (a) age of the youth;

6 (b) ability of the youth to pay;

7 (c) ability of the parents, legal guardian, or persons contributing to the youth's delinquency or need
8 for supervision to pay;

9 (d) amount of damage to the victim; and

10 (e) legal remedies of the victim. However, the ability of the victim or the victim's insurer to stand
11 any loss may not be considered in any case.

12 (3) If the youth violates an aftercare agreement as provided for in 52-5-128, the youth must be
13 returned to the court for further disposition. A youth may not be placed in a state youth correctional facility
14 under informal adjustment.

15 (4) If the youth is placed in substitute care requiring payment by the department, the court shall
16 examine the financial ability of the youth's parents or guardians to pay a contribution covering all or part
17 of the costs for the care, placement, and treatment of the youth, including the costs of necessary medical,
18 dental, and other health care.

19 (5) If the court determines that the youth's parents or guardians are financially able to pay a
20 contribution as provided in subsection (4), the court shall order the youth's parents or guardians to pay an
21 amount based on the uniform child support guidelines adopted by the department of public health and
22 human services pursuant to 40-5-209.

23 (8) (a) Except as provided in subsection (8)(b), contributions ordered under this section and each
24 modification of an existing order are enforceable by immediate or delinquency income withholding, or both,
25 under Title 40, chapter 5, part 4. An order for contribution that is inconsistent with this section is
26 nevertheless subject to withholding for the payment of the contribution without need for an amendment
27 of the support order or for any further action by the court.

28 (b) A court-ordered exception from contributions under this section must be in writing and be
29 included in the order. An exception from the immediate income withholding requirement may be granted
30 if the court finds there is:

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1 (i) good cause not to require immediate income withholding; or

2 (iii) an alternative arrangement between the department and the person who is ordered to pay
3 contributions.

4 (c) A finding of good cause not to require immediate income withholding must, at a minimum, be
5 based upon:

6 (i) a written determination and explanation by the court of the reasons why the implementation of
7 immediate income withholding is not in the best interests of the child; and

8 (iii) proof of timely payment of previously ordered support in cases involving modification of
9 contributions ordered under this section.

10 (d) An alternative arrangement must:

11 (i) provide sufficient security to ensure compliance with the arrangement;

12 (iii) be in writing and be signed by a representative of the department and the person required to
13 make contributions; and

14 (iii) if approved by the court, be entered into the record of the proceeding.

15 (7) (a) If the court orders the payment of contributions under this section, the department shall
16 apply to the department of public health and human services for support enforcement services pursuant
17 to Title IV-D of the Social Security Act.

18 (b) The department of public health and human services may collect and enforce a contribution
19 order under this section by any means available under law, including the remedies provided for in Title 40,
20 chapter 5, parts 2 and 4."

22 Section 20. Section 41-5-522, MCA, is amended to read:

23 "41-5-522. Disposition hearing. (1) As soon as practicable after a youth is found to be a
24 delinquent youth or a youth in need of supervision, the court shall conduct a dispositional hearing. The
25 dispositional hearing may involve a determination of the financial ability of the youth's parents or guardians
26 to pay a contribution for the cost of care, commitment, and treatment of the youth as required in 41-5-523.

27 (2) Before conducting the dispositional hearing, the court shall direct that a social summary, family
28 assessment, or predisposition report be made in writing by a probation officer concerning the youth, the
29 youth's family, the youth's environment, and other matters relevant to the need for care or rehabilitation
30 or disposition of the case. The youth court may have the youth examined, and the results of the

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1 (a) retain jurisdiction in a disposition provided under subsection (1)(b) or (1)(d);

2 (b) place the youth on probation;

3 (c) subject to subsections (1)(i), (2)(a), (2)(b), and (8), sentence a youth to one of the state
4 youth correctional facilities established under 52-5-101 and, as part of the sentence, deny the youth
5 eligibility for release without the express approval of the sentencing judge until the youth reaches 18 years
6 of age. A youth may not be sentenced to a state youth correctional facility unless the department informs
7 the judge that space is available for the youth at that facility. The sentencing judge may not place
8 limitations on the release unless recommended by the youth placement committee.

9 (d) require a youth found to be delinquent to register as a sex offender pursuant to 46-18-254 and
10 46-23-508;

11 (e) place the youth in an in-state residence that ensures that the youth is accountable, provides
12 for rehabilitation, and protects the public. Before placement, the sentencing judge shall seek and consider
13 placement recommendations from the youth placement committee. The judge may not place the youth in
14 an in-state residence unless the department informs the judge that resources are available for placement
15 of the youth at that residence.

16 (f) commit the youth to the department. In an order committing a youth to the department:

17 (i) the court shall determine whether continuation in the youth's own home would be contrary to
18 the welfare of the youth and whether reasonable efforts have been made to prevent or eliminate the need
19 for removal of the youth from the youth's home;

20 (ii) in the case of a delinquent youth who is determined by the court to be a serious juvenile
21 offender, the judge may specify that the youth be placed in a state youth correctional facility if the judge
22 finds that the placement is necessary for the protection of the public. The court may order the department
23 to notify the court within 5 working days before the proposed release of a youth from a youth correctional
24 facility. Once a youth is committed to the department for placement in a state youth correctional facility,
25 the department is responsible for determining an appropriate date of release into an appropriate placement.

26 (g) order restitution by the youth or the youth's parents;

27 (h) impose a fine as authorized by law if the violation alleged would constitute a criminal offense
28 if committed by an adult;

29 (i) require the performance of community service;

30 (j) require the youth, the youth's parents or guardians, or the persons having legal custody of the

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1 examination must be made available to the court as part of the social summary or predisposition report. The
2 court may order the examination of a parent or guardian whose ability to care for or supervise a youth is
3 at issue before the court. The results of the examination must be included in the social summary or
4 predisposition report. The youth or the youth's parents, guardian, or counsel has the right to subpoena all
5 persons who have prepared any portion of the social summary, family assessment, or predisposition report
6 and has the right to cross-examine the parties at the dispositional hearing.

7 (3) Defense counsel must be furnished with a copy of the social summary, family assessment, or
8 predisposition report and psychological report prior to the dispositional hearing.

9 (4) The dispositional hearing must be conducted in the manner set forth in subsections (3), (4), and
10 (5) of 41-5-521. The court shall hear all evidence relevant to a proper disposition of the case best serving
11 the interests of the youth and the public. The evidence must include but is not limited to the social
12 summary, family assessment, and predisposition report provided for in subsection (2) of this section.

13 (5) If the court finds that it is in the best interest of the youth, the youth or the youth's parents
14 or guardian may be temporarily excluded from the hearing during the taking of evidence on the issues of
15 need for treatment and rehabilitation.

16 (8) In determining whether restitution, as authorized by 41-5-523, is appropriate in a particular
17 case, the following factors may be considered in addition to any other evidence:

18 (a) age of the youth;

19 (b) ability of the youth to pay;

20 (c) ability of the parents, legal guardian, or those that contributed to the youth's delinquency or

21 need for supervision to pay;

22 (d) amount of damage to the victim; and

23 (e) legal remedies of the victim. However, the ability of the victim or the victim's insurer to attend
24 any loss may not be considered in any case."

25 Section 21. Section 41-5-523, MCA, is amended to read:

26 "41-5-523. Disposition -- sentence to correctional facility -- commitment to department --
27 placement and evaluation of youth -- restrictions. (1) If a youth is found to be a delinquent youth or a youth
28 in need of supervision, the youth court may enter its judgment making one or more of the following
29 dispositions:

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1 youth to receive counseling services;

2 (k) require the medical and psychological evaluation of the youth, the youth's parents or guardians,
3 or the persons having legal custody of the youth;

4 (l) require the parents, guardians, or other persons having legal custody of the youth to furnish
5 services the court may designate;

6 (m) order further care, treatment, evaluation, or relief that the court considers beneficial to the
7 youth and the community and that does not obligate funding from the department for services outside the
8 state of Montana without the department's approval, except that a youth may not be placed by a youth
9 court in a residential treatment facility as defined in 50-5-101. Only the department may, pursuant to
10 subsection (1)(f), place a youth in a residential treatment facility.

11 (n) commit the youth to a mental health facility if, based upon the testimony of a professional
12 person as defined in 53-21-102, the court finds that the youth is seriously mentally ill as defined in
13 53-21-102. The youth is entitled to all rights provided by 53-21-114 through 53-21-119.

14 (i) A youth adjudicated mentally ill or seriously mentally ill as defined in 53-21-102 may not be
15 committed or sentenced to a state youth correctional facility.

16 (iii) A youth adjudicated to be mentally ill or seriously mentally ill after placement in or sentencing
17 to a state youth correctional facility must be moved to a more appropriate placement in response to the
18 youth's mental health needs and consistent with the disposition alternatives available in 53-21-127.

19 (c) place the youth under home arrest as provided in Title 46, chapter 18, part 10;

20 (d) order placement of a youth in a youth assessment placement for up to 10 days.

21 (2) When a youth is committed to the department, the department shall determine the appropriate
22 placement and rehabilitation program for the youth after considering the recommendations made under
23 41-5-527 by the youth placement committee. Placement is subject to the following limitations:

24 (a) A youth in need of supervision or adjudicated delinquent for commission of an act that would
25 not be a criminal offense if committed by an adult may not be placed in a state youth correctional facility.

26 (b) A youth may not be held in a state youth correctional facility for a period of time in excess of
27 the maximum period of imprisonment that could be imposed on an adult convicted of the offense or
28 offenses that brought the youth under the jurisdiction of the youth court. This section does not limit the
29 power of the department to enter into an aftercare agreement with the youth pursuant to 52-5-128.

30 (c) A youth may not be placed in or transferred to a penal institution or other facility used for the

1 execution of sentence of adults convicted of crimes.

2 (3) A youth placed in a state youth correctional facility or other facility or program operated by the
3 department or who signs an aftercare agreement under 52-5-128 must be supervised by the department.
4 A youth who is placed in any other placement by the department, the youth court, or the youth court's
5 juvenile probation officer must be supervised by the probation officer of the youth court having jurisdiction
6 over the youth under 41-5-205 whether or not the youth is committed to the department. Supervision by
7 the youth probation officer includes but is not limited to:

8 (a) submitting information and documentation necessary for the person, committee, or team that
9 is making the placement recommendation to determine an appropriate placement for the youth;

10 (b) securing approval for payment of special education costs from the youth's school district of
11 residence or the office of public instruction, as required in Title 20, chapter 7, part 4;

12 (c) submitting an application to a facility in which the youth may be placed; and

13 (d) case management of the youth.

14 (4) The youth court may order a youth to receive a medical or psychological evaluation at any time
15 prior to final disposition if the youth waives the youth's constitutional rights in the manner provided for in
16 41-5-303. The county determined by the court as the residence of the youth is responsible for the cost of
17 the evaluation, except as provided in subsection (5). A county may contract with the department or other
18 public or private agencies to obtain evaluation services ordered by the court.

19 (5) The youth court shall determine the financial ability of the youth's parents to pay the cost of
20 an evaluation ordered by the court under subsection (4). If they are financially able, the court shall order
21 the youth's parents to pay all or part of the cost of the evaluation.

22 (6) The youth court may not order placement or evaluation of a youth at a state youth correctional
23 facility unless the youth is found to be a delinquent youth or is alleged to have committed an offense that
24 is transferable to criminal court under 41-5-206.

25 (7) An evaluation of a youth may not be performed at the Montana state hospital unless the youth
26 is transferred to the district court under 41-5-206, 41-5-208, or 41-5-1105.

27 (8) An order of the court may be modified at any time. In the case of a youth committed to the
28 department, an order pertaining to the youth may be modified only upon notice to the department and
29 subsequent hearing.

30 (9) Whenever the court commits a youth to the department, it shall transmit with the dispositional

- 1 judgment copies of medical reports, social history material, family assessment material, education records,
- 2 and any other clinical, predisposition, or other reports and information pertinent to the care and treatment
- 3 of the youth.
- 4 (10) If a youth is committed to the department, the court shall examine the financial ability of the
- 5 youth's parents or guardians to pay a contribution covering all or part of the costs for the care,
- 6 commitment, and treatment of the youth, including the costs of necessary medical, dental, and other health
- 7 care.
- 8 (11) If the court determines that the youth's parents or guardians are financially able to pay a
- 9 contribution as provided in subsection (10), the court shall order the youth's parents or guardians to pay
- 10 an amount based on the uniform child support guidelines adopted by the department of public health and
- 11 human services pursuant to 40-5-209.
- 12 (12) (a) Except as provided in subsection (12)(b), contributions ordered under this section and each
- 13 modification of an existing order are enforceable by immediate or delinquency income withholding, or both,
- 14 under Title 40, chapter 6, part 4. An order for contribution that is inconsistent with this section is
- 15 nevertheless subject to withholding for the payment of the contribution without need for an amendment
- 16 of the support order or for any further action by the court.
- 17 (b) A court-ordered exception from contributions under this section must be in writing and be
- 18 included in the order. An exception from the immediate income withholding requirement may be granted
- 19 if the court finds there is:
- 20 (i) good cause not to require immediate income withholding; or
- 21 (ii) an alternative arrangement between the department and the person who is ordered to pay
- 22 contributions.
- 23 (c) A finding of good cause not to require immediate income withholding must, at a minimum, be
- 24 based upon:
- 25 (i) a written determination and explanation by the court of the reasons why the implementation of
- 28 immediate income withholding is not in the best interests of the youth; and
- 27 (ii) proof of timely payment of previously ordered support in cases involving modification of
- 28 contributions ordered under this section.
- 29 (d) An alternative arrangement must:
- 30 (i) provide sufficient security to ensure compliance with the arrangement;

- 1 (ii) be in writing and be signed by a representative of the department and the person required to
- 2 make contributions; and
- 3 (iii) If approved by the court, be entered into the record of the proceeding.
- 4 (13) Upon a showing of a change in the financial ability of the youth's parents or guardians to pay,
- 5 the court may modify its order for the payment of contributions required under subsection (11).
- 6 (14) (a) If the court orders the payment of contributions under this section, the department shall
- 7 apply to the department of public health and human services for support enforcement services pursuant
- 8 to Title IV-D of the Social Security Act.
- 9 (b) The department of public health and human services may collect and enforce a contribution
- 10 order under this section by any means available under law, including the remedies provided for in Title 40,
- 11 chapter 6, parts 2 and 4."
- 12
- 13 NEW SECTION. Section 22. Codification instruction. [Sections 1 through 9] are intended to be
- 14 codified as an integral part of Title 41, chapter 5, and the provisions of Title 41, chapter 5, apply to
- 15 [sections 1 through 9].
- 16
- 17 NEW SECTION. Section 23. Coordination instruction. If __ Bill No. __ [LC 0229] is passed and
- 18 approved and if it includes sections that amend 41-3-1102, 41-3-1103, 41-5-103, 41-5-201, 41-5-301,
- 19 41-5-303, 41-5-305, 41-5-308, 41-5-401, 41-5-403, 41-5-522, and 41-5-523, then [sections 10 through
- 20 21 of this act], amending 41-3-1102, 41-3-1103, 41-5-103, 41-5-201, 41-5-301, 41-5-303, 41-5-305,
- 21 41-5-308, 41-5-401, 41-5-403, 41-5-522, and 41-5-523, are void.
- 22
- 23 NEW SECTION. Section 24. Effective date. [This act] is effective on passage and approval.
- 24
- 25 NEW SECTION. Section 25. Termination. [This act] terminates June 30, 2001.
- 26
- 27 -END-

1
2 INTRODUCED BY _____ BILL NO. _____
3 BY REQUEST OF THE JUVENILE JUSTICE AND MENTAL HEALTH STUDY COMMISSION
4
5 A BILL FOR AN ACT ENTITLED: "AN ACT IMPOSING A 0.1 PERCENT LOCAL VEHICLE TAX FOR THE
6 FUNDING OF YOUTH COURT EXPENSES; REDUCING THE LOCAL OPTION VEHICLE TAX TO 0.4 PERCENT;
7 AND AMENDING SECTIONS 61-3-509, 61-3-537, AND 61-3-701, MCA; AND PROVIDING AN EFFECTIVE
8 DATE."
9
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
11

12 Section 1. Section 61-3-637, MCA, is amended to read:

13 ~~"61-3-637. (Temporary) Local option vehicle tax. (1) A county may impose a local vehicle tax on~~
14 ~~vehicles subject to a property tax under 61-3-504(2) at a rate of up to 0.5% 0.4% of the value determined~~
15 ~~under 61-3-503. In addition to the tax imposed under 61-3-504(2).~~

16 (2) A local vehicle tax is payable at the same time and in the same manner as the tax imposed
17 under 61-3-504(2). The first priority of the local vehicle tax is for district court funding, and the tax is
18 distributed as follows:

19 (a) 50% to the county; and

20 (b) the remaining 50% to the county and the incorporated cities and towns within the county,
21 apportioned on the basis of population. The distribution to a city or town is determined by multiplying the
22 amount of money available by the ratio of the population of the city or town to the total county population.
23 The distribution to the county is determined by multiplying the amount of money available by the ratio of
24 the population of unincorporated areas within the county to the total county population.

25 (3) ~~(a) The~~ Subject to subsection (3)(b), the governing body of a county may impose, revise, or
26 revoke a local vehicle tax by adopting a resolution before July 1, after conducting a public hearing on the
27 proposed resolution. The resolution may provide for the distribution of the local vehicle tax.

28 ~~(b) A public hearing is not required for a resolution to reduce a local vehicle tax.~~ (Terminates June
29 30, 2005--sec. 2, 3, Ch. 217, L. 1995.)

30 61-3-537. (Effective July 1, 2005) Local option vehicle tax. (1) A county may impose a local

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1 vehicle tax on vehicles subject to a property tax under 61-3-504(2) at a rate of up to ~~0.5% 0.4%~~ of the
2 value determined under 61-3-503. In addition to the tax imposed under 61-3-504(2).

3 (2) A local vehicle tax is payable at the same time and in the same manner as the tax imposed
4 under 61-3-504(2) and is distributed in the same manner, based on the registration address of the owner
5 of the motor vehicle.

6 (3) ~~(a) The~~ Subject to subsection (3)(b), the governing body of a county may impose, revise, or
7 revoke a local vehicle tax by adopting a resolution before July 1, after conducting a public hearing on the
8 proposed resolution.

9 ~~(b) A public hearing is not required for a resolution to reduce a local vehicle tax."~~

10
11 NEW SECTION. Section 2. Youth court vehicle tax. (1) A county shall impose a youth court
12 vehicle tax on vehicles subject to a property tax under 61-3-504(2) at a rate of 0.1% of the value
13 determined under 61-3-503. In addition to the taxes imposed under 61-3-504(2) and 61-3-537.

14 (2) A youth court vehicle tax is payable at the same time and in the same manner as the tax
15 imposed under 61-3-504(2) and is for county funding of youth court expenses.

16
17 Section 3. Section 61-3-509, MCA, is amended to read:

18 ~~"61-3-509. Disposition of taxes. (1) Except as provided in subsections (2) and (3), the~~
19 ~~county treasurer shall, after deducting the district court fee, credit all taxes on motor vehicles and fees in~~
20 ~~lieu of tax on motorcycles, motor homes, travel trailers, and campers collected under 61-3-504, 61-3-521,~~

21 ~~61-3-527, and 61-3-537 to a motor vehicle suspense fund, and at some time between March 1 and March~~
22 ~~10 of each year and every 60 days after that date, the county treasurer shall distribute the money in the~~
23 ~~motor vehicle suspense fund in the relative proportions required by the levies for state, county, school~~
24 ~~district, and municipal purposes in the same manner as personal property taxes are distributed.~~

25 ~~(2) The county treasurer shall credit the taxes collected under Section 21 to the county general~~
26 ~~fund to be used for county funding of youth court expenses as provided in 41-5-104.~~

27 ~~(3) The county treasurer shall deduct as a district court fee 7% of the amount of the 2% tax~~
28 ~~collected on an automobile or truck having a rated capacity of 1 ton or less. The county treasurer shall~~
29 ~~credit the fee for district courts to a separate suspense account and shall forward the amount in the~~
30 ~~account to the state treasurer at the time that the county treasurer distributes the motor vehicle suspense~~

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1 fund. The state treasurer shall credit amounts received under this subsection to the general fund to be used
 2 for purposes of state funding of the district court expenses as provided in 3-5-901."

3

4 Section 4. Section 61-3-701, MCA, is amended to read:

5 "61-3-701. Foreign vehicles used in gainful occupation to be registered -- reciprocity. (1) Before
 6 any foreign licensed motor vehicle may be operated on the highways of this state for hire, compensation,
 7 or profit or before the owner ~~and/or~~ or user thereof of a foreign licensed motor vehicle uses the vehicle if
 8 ~~such owner-and/or-user is engaged in gainful occupation or business enterprise in the state, including~~
 9 highway work, the owner of the vehicle shall make application apply to a county treasurer for registration
 10 upon an application form furnished by the department. Upon satisfactory evidence of ownership submitted
 11 to the county treasurer and the payment of property taxes, if appropriate, as required by 15-8-201,
 12 15-8-202, 15-24-301, 61-3-504, ~~or~~ 61-3-537, or [section 2], the treasurer shall accept the application for
 13 registration and shall collect the regular license fee required for the vehicle.

14 (2) ~~The Upon acceptance of the application for registration and collection of the license fee, the~~
 15 treasurer shall thereupon issue to the applicant a copy of the certificate entitled "Owner's Certificate of
 16 Registration and Payment Receipt" and forward a duplicate copy of the certificate to the department. The
 17 treasurer shall at the same time issue to the applicant the proper license plates or other identification
 18 markers, which shall at all times must be displayed upon the vehicle when operated or driven upon roads
 19 and highways of this state during the effective period of the ~~life-of~~ the license.

20 (3) The registration receipt shall ~~does~~ not constitute evidence of ownership ~~but shall and may be~~
 21 used only for registration purposes. ~~No~~ A Montana certificate of ownership shall may not be issued for this
 22 type of registration.

23 (4) This section is not applicable to any vehicle covered by a valid and existing reciprocal
 24 agreement or declaration entered into under the provisions of the laws of Montana."

25

26 NEW SECTION. Section 5. Codification Instruction. [Section 2] is intended to be codified as an
 27 integral part of Title 61, chapter 3, part 5, and the provisions of Title 61, chapter 3, part 5, apply to
 28 [section 2].

29

30 NEW SECTION. Section 6. Effective date. [This act] is effective July 1, 1997.

-END-

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BILL NO. _____

1 INTRODUCED BY _____

2 BY REQUEST OF THE JUVENILE JUSTICE AND MENTAL HEALTH STUDY COMMISSION

3

4

5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE YOUTH COURT ACT; REPLACING

8 THE CATEGORY OF "YOUTH IN NEED OF SUPERVISION" WITH "YOUTH IN NEED OF INTERVENTION";

7 INCLUDING SCHOOLS UNDER CONFIDENTIALITY DISCLOSURE EXCEPTIONS FOR DEPARTMENT OF

8 PUBLIC HEALTH AND HUMAN SERVICES RECORDS; CREATING YOUTH ASSESSMENT PLACEMENTS,

9 FAMILY ASSESSMENTS, AND ASSESSMENT OFFICERS TO EVALUATE THE STRENGTHS AND NEEDS OF

10 A YOUTH AND THE FAMILY OF A YOUTH BROUGHT TO THE ATTENTION OF YOUTH COURT; REQUIRING

11 THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO LICENSE YOUTH ASSESSMENT

12 PLACEMENTS; REDEFINING "DELINQUENT YOUTH"; DEFINING "HABITUAL TRUANCY", "VICTIM",

13 "YOUTH IN NEED OF INTERVENTION", AND OTHER TERMS; ALLOWING SHORT-TERM DETENTION FOR

14 UP TO 10 WORKING DAYS; ALLOWING THE APPOINTMENT OF JUDGES PRO TEMPORE OR SPECIAL

15 MASTERS FOR YOUTH COURT PRELIMINARY MATTERS; ALLOWING A COUNTY ATTORNEY TO MAKE

18 A MOTION FOR LEAVE TO FILE AN INFORMATION DIRECTLY IN DISTRICT COURT FOR CERTAIN YOUTH

17 OFFENSES; ADDING ACCOUNTABILITY AS AN OFFENSE THAT CAN BE FILED IN DISTRICT COURT;

18 CLARIFYING DUE PROCESS RIGHTS IN THE TRANSFER OF CASES TO DISTRICT COURT AFTER

19 PROSECUTION; ADDING ASSESSMENT PLACEMENTS FOR PLACEMENTS PRIOR TO ADJUDICATION AND

20 FOR DISPOSITION; PROVIDING CRITERIA FOR PLACEMENT IN AN ASSESSMENT; PROVIDING THE TYPES

21 OF PLACEMENTS ALLOWED FOR ASSESSMENT; GENERALLY REORGANIZING DISPOSITION STATUTES;

22 LIMITING THE USE OF AN INFORMAL CONSENT ADJUSTMENT AND A CONSENT DECREE TO A SINGLE

23 FELONY EACH; PROVIDING GRADUATED SANCTIONS; PROVIDING ADDITIONAL SANCTIONS; ADDING

24 PROVISIONS THAT PARENTS AND GUARDIANS MAY BE HELD RESPONSIBLE FOR CONTRIBUTING TO

25 THE COSTS OF ADJUDICATION, DISPOSITION, SUPERVISION, AND MEDICAL COSTS OR VICTIM'S

28 COUNSELING AND DAMAGES; ALLOWING DETENTION FOR UP TO 3 DAYS FOR AN INFORMAL

27 CONSENT ADJUSTMENT; PROVIDING THAT PERSONS BE ADVISED OF OBLIGATIONS UNDER THE ACT;

28 ALLOWING DETENTION FOR A CONSENT DECREE FOR UP TO 10 DAYS; REQUIRING THAT A YOUTH

29 MUST ADMIT GUILT FOR CHARGES OF AN OFFENSE IN ORDER FOR A CASE TO BE DISPOSED OF BY

30 A CONSENT DECREE; ADDING A PROVISION THAT SCHOOL REPRESENTATIVES ON YOUTH PLACEMENT


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1 COMMITTEES AND AUXILIARY TEAMS BE PERSONS WITH PERSONAL KNOWLEDGE OF THE CHILD;

2 AMENDING SECTIONS 7-6-501, 20-5-321, 20-7-422, 23-5-158, 41-3-205, 41-3-1101, 41-3-1102,

3 41-3-1103, 41-3-1114, 41-3-1122, 41-3-1132, 41-5-103, 41-5-201, 41-5-203, 41-5-204, 41-5-205,

4 41-5-208, 41-5-209, 41-5-301, 41-5-303, 41-5-304, 41-5-305, 41-5-306, 41-5-401, 41-5-403, 41-5-501,

5 41-5-511, 41-5-515, 41-5-521, 41-5-522, 41-5-523, 41-5-524, 41-5-525, 41-5-530, 41-5-533, 41-5-603,

6 41-5-605, 41-5-802, 41-5-1004, 41-5-1008, 41-5-1104, 41-5-1105, 45-5-824, 45-5-837, 48-18-258,

7 48-24-207, 52-2-211, 52-5-101, 53-1-201, AND 53-1-203, MCA; REPEALING SECTION 41-5-310, MCA;

8 AND PROVIDING AN EFFECTIVE DATE."

9

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11

12 Section 1. Section 7-8-501, MCA, is amended to read:

13 "7-8-501. Definitions. As used in 7-8-502 and this section, unless the context requires otherwise,

14 the following definitions apply:

15 (1) "Detention" means the holding or temporary placement of a youth in a facility other than the

16 youth's own home for the purpose of ensuring the continued custody of the youth at any time after the

17 youth is taken into custody and before final disposition of the youth's case.

18 (2) "Juvenile detention program" means services to provide for the lawful detention or shelter care

19 of youth. The term includes:

20 (a) youth evaluations ordered by the court under 41-5-523; and

21 (b) programs for the transportation of youth to appropriate detention facilities or shelter care

22 facilities.

23 (3) "Local government" has the same meaning as provided in 7-12-1103.

24 (4) "Shelter care" has the same meaning as provided in 41-5-103.

25 (5) "Youth" means an individual who is less than 18 years of age who is alleged to be a delinquent

26 youth or youth in need of supervision intervention as those terms are defined in 41-5-103."

27

28 Section 2. Section 20-5-321, MCA, is amended to read:

29 "20-5-321. Attendance with mandatory approval -- tuition and transportation. (1) An out-of-district

30 attendance agreement that allows a child to enroll in and attend a school in a Montana school district that


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(3) Except as provided in subsection (4), the trustees of the resident district and the trustees of the district of choice shall approve the out-of-district attendance agreement and notify the county superintendent of schools of the county of the child's residence of the approval of the agreement within 10 days. The county superintendent shall approve the agreement for payment under 20-5-324(5).

(4) Unless the child is a child with disabilities who resides in the district, the trustees of the district where the school to be attended is located may disapprove an out-of-district attendance agreement whenever they find that, due to insufficient room and overcrowding, the accreditation of the school would be adversely affected by the acceptance of the child."

Section 3. Section 20-7-422, MCA, is amended to read:

"20-7-422. Out-of-state placement of children with disabilities -- payment of costs. (1) In accordance with a placement made by persons determining an individualized education program for a child with disabilities, the trustees of a district may arrange for the attendance of the child in a special education program offered outside of the state of Montana.

(2) Except as provided in subsection (3), when the persons determining the individualized education program of a child with disabilities who is in need of special education recommend placement in an out-of-state private residential facility, the trustees of the district of residence shall negotiate the amount and manner of payment of all costs associated with the placement.

(3) Whenever a child with disabilities who is in need of special education and related services is adjudicated by a court of competent jurisdiction to be an abused or neglected child, as defined in 41-3-102, or a youth in need of supervision intervention or delinquent youth, as defined in 41-5-103, and is placed by a state agency in an out-of-state private residential facility, the superintendent of public instruction shall negotiate with:

(a) the provider for the amount and manner of payment of education fees consistent with the individualized education program determined for the child under the provisions of 20-7-402; and

(b) the state agency that makes the placement for the portion of the placement costs that represents the child's education program.

(4) Payments for a child with disabilities as negotiated in subsection (3) must be paid by the superintendent of public instruction from the state special education appropriation."

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is outside of the child's district of residence or in a public school district of a state or province that is adjacent to the county of the child's residence is mandatory whenever:

(a) the child resides closer to the school that the child wishes to attend and more than 3 miles from the school the child would attend in the resident district and;

(ii) the resident district does not provide transportation; or

(iii) the district of residence provides transportation and is not within the same county as the child's school district of choice;

(b) the child resides in a location where, due to road or geographic conditions, it is impractical to attend the school nearest the child's residence;

(c) the child is a member of a family that is required to send another child outside of the elementary district to attend high school and the child of elementary age may more conveniently attend an elementary school where the high school is located, provided that the child resides more than 3 miles from an elementary school in the resident district or that the parent is required to move to the elementary district where the high school is located to enroll another child in high school;

(d) the child has been adjudicated by a court of competent jurisdiction to be an abused or neglected child, as defined in 41-3-102, or a youth in need of supervision intervention or a delinquent youth, as defined in 41-5-103, and has been placed in a licensed youth care facility that is approved by the department of public health and human services and, as a result of the placement, is required to attend school outside of the child's district of residence; or

(e) the child is required to attend school outside of the district of residence as the result of a placement by a state agency or parent in a group home licensed by the state or an order of a court of competent jurisdiction.

(2) (a) Whenever a parent or guardian of a child, an agency of the state, or a court wishes to have a child attend a school under the provisions of this section, the parent or guardian, agency, or court shall complete an out-of-district attendance agreement in consultation with an appropriate official of the district the child will attend.

(b) The attendance agreement must set forth the financial obligations, if any, for costs incurred for tuition and transportation as provided in 20-5-323 and Title 20, chapter 10.

(c) The trustees of the district of choice may waive any or all of the tuition rate, but any waiver must be applied equally to all students.

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Section 4. Section 23-5-158, MCA, is amended to read:

"23-5-158. *Minor not to participate -- penalty -- exception.* (1) Except as provided in subsection (3), a person may not purposely or knowingly allow a person under 18 years of age to participate in a gambling activity. A person who violates this subsection is guilty of a misdemeanor and must be punished in accordance with 23-5-181.

(2) Except as provided in subsection (3), a person under 18 years of age may not purposely or knowingly participate in a gambling activity. A person who violates this subsection is subject to a civil penalty not to exceed \$50 if the proceedings for violating this subsection are held in justice's, municipal, or city court. If the proceedings are held in youth court, the offender must be treated as an alleged youth in need of ~~supervision~~ intervention, as defined in 41-6-103. The youth court may enter its judgment under 41-5-523.

(3) A person under 18 years of age may sell or buy tickets for or receive prizes from a raffle conducted in compliance with 23-5-413 if proceeds from the raffle, minus administrative expenses and prizes paid, are used to support charitable activities, scholarships or educational grants, or community service projects."

Section 5. Section 41-3-205, MCA, is amended to read:

"41-3-205. *Confidentiality -- disclosure exceptions.* (1) The case records of the department of public health and human services and its local affiliate, the county welfare department, the county attorney, and the court concerning actions taken under this chapter and all records concerning reports of child abuse and neglect must be kept confidential except as provided by this section. Except as provided in subsections (4) and (5), a person who permits or encourages the unauthorized dissemination of the contents of case records is guilty of a misdemeanor.

(2) Records may be disclosed to a court for in camera inspection if relevant to an issue before it. The court may permit public disclosure if it finds disclosure to be necessary for the fair resolution of an issue before it.

(3) Records may also be disclosed to the following persons or entities in this state and any other state or country:

(a) a department, agency, or organization, including a federal agency, military enclave, or Indian tribal organization, that is legally authorized to receive, inspect, or investigate reports of child abuse or

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neglect and that otherwise meets the disclosure criteria contained in this section;

(b) a licensed youth care facility or a licensed child-placing agency that is providing services to the family or child who is the subject of a report in the records;

(c) a health or mental health professional who is treating the family or child who is the subject of a report in the records;

(d) a parent, guardian, or person designated by a parent or guardian of the child who is the subject of a report in the records or other person responsible for the child's welfare, without disclosure of the identity of any person who reported or provided information on the alleged child abuse or neglect incident contained in the records;

(e) a child named in the records who was allegedly abused or neglected or the child's legal guardian or legal representative, including the child's guardian ad litem or attorney or a special advocate appointed by the court to represent a child in a pending case;

(f) the state protection and advocacy program as authorized by 42 U.S.C. 6042(a)(2)(B);

(g) approved foster and adoptive parents who are or will be providing care for a child;

(h) a person about whom a report has been made and that person's attorney, with respect to the relevant records pertaining to that person only and without disclosing the identity of the reporter or any other person whose safety may be endangered;

(i) an agency, including a probation or parole agency, that is legally responsible for the supervision of an alleged perpetrator of child abuse or neglect;

(j) a person, agency, or organization that is engaged in a bona fide research or evaluation project and that is authorized by the department to conduct the research or evaluation;

(k) the members of an interdisciplinary child protective team authorized under 41-3-108 for the purposes of assessing the needs of the child and family, formulating a treatment plan, and monitoring the plan;

(l) the coroner or medical examiner when determining the cause of death of a child;

(m) a child fatality review team recognized by the department;

(n) a department or agency investigating an applicant for a license or registration that is required to operate a youth care facility, day-care facility, or child-placing agency;

(o) a person or entity who is carrying out background, employment-related, or volunteer-related screening of current or prospective employees or volunteers who have or may have unsupervised contact

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(5) A news organization or its employee, including a freelance writer or reporter, is not liable for reporting facts or statements made by an immediate family member under subsection (4) if the news organization, employee, writer, or reporter maintains the confidentiality of the child who is the subject of the proceeding.

(6) This section is not intended to affect the confidentiality of criminal court records or records of law enforcement agencies."

Section 6. Section 41-3-1101, MCA, is amended to read:

"41-3-1101. Establishment of substitute care for youth. The legislature, in recognition of the wide and varied needs of youth in need of care, delinquent youth, and youth in need of ~~supervision~~ intervention of this state and of the desirability of meeting these needs on a community level to the fullest extent possible, establishes by this part a system of substitute care to provide facilities and services for youth placed out of their homes and establishes a program to provide those facilities and services through local nonprofit corporations, counties, and the department of public health and human services."

Section 7. Section 41-3-1102, MCA, is amended to read:

"41-3-1102. Definitions. For the purposes of this part, the following definitions apply:

(1) "Child-care agency" means a youth care facility in which substitute care is provided to 13 or more children or youth.

(2) "Department" means the department of public health and human services provided for in 2-15-2201.

(3) "Foster child" means a person under 18 years of age who has been placed by the department in a licensed youth foster home.

(4) "Operator of a youth care facility" means a person owning or operating a youth care facility into which the operator takes any child or children for the purpose of caring for them and maintaining them and for which care and maintenance the operator receives money or other consideration of value and which child is ~~either~~ not the operator's son, daughter, ~~son or~~ or ward, except that this part does not apply when any person accepts the care and custody of a child on a temporary basis and simply as a temporary accommodation for the parent or parents, guardian, or relative of the child.

(5) "Person" means any individual, partnership, voluntary association, or corporation.

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with children through employment or volunteer activities. A request for information under this subsection (3)(c) must be made in writing. Disclosure under this subsection (3)(c) is limited to information that indicates a risk to children posed by the person about whom the information is sought, as determined by the department.

(p) the news media if disclosure is limited to confirmation of factual information regarding how the case was handled and if disclosure does not violate the privacy rights of the child or the child's parent or guardian as determined by the department;

(q) an employee of the department or other state agency if disclosure of the records is necessary for administration of programs designed to benefit the child;

(r) an agency of an Indian tribe or the relatives of an Indian child if disclosure of the records is necessary to meet requirements of the federal Indian Child Welfare Act;

(s) a youth probation officer who is working in an official capacity with the child who is the subject of a report in the records;

(t) a county attorney, peace officer, or attorney who is hired by or represents the department; if disclosure is necessary for the investigation, defense, or prosecution of a case involving child abuse or neglect;

(u) a foster care review committee established under 41-3-1115 or, when applicable, a local citizen review board established under Title 41, chapter 3, part 10;

(v) a school employee participating in an interview of a child by a social worker, county attorney, or peace officer as provided in 41-3-202;

(w) a member of a county interdisciplinary child information team formed under the provisions of 52-2-211;

(x) members of a local interagency staffing group provided for in 52-2-203; or

(y) a member of a youth placement committee formed under the provisions of 41-5-525; or

(z) a principal of a school or a school employee who is working with a student who is a common client of the department.

(4) A person who is authorized to receive records under this section shall maintain the confidentiality of the records and may not disclose information in the records to anyone other than the persons described in subsection (3)(a). However, this subsection may not be construed to compel a family member to keep the proceedings confidential.

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(d) "Respite care" means the provision of temporary, short-term supervision or care of a foster child, in an emergency or on an intermittent basis, to provide foster parents relief from the daily care requirements of a foster child whose mental or physical condition requires special or intensive supervision or care. Respite care includes but is not limited to homemaker services, child care, and emergency care either in the home or out of the home.

(7) "Respite care provider" means a person who meets the qualifications and requirements established by the department to provide respite care under 41-3-1151.

(8) "Substitute care" means full-time care of youth in a residential setting for the purpose of providing food, shelter, security and safety, guidance, direction, and if necessary, treatment to youth who are removed from or without the care and supervision of their parents or guardian.

(9) "Youth assessment placement" has the meaning provided in 41-5-103.

(10) "Youth care facility" means a facility that is licensed by the department or by the appropriate licensing authority in another state and in which facility substitute care is provided to youth.

The term includes youth foster homes, youth group homes, and child-care agencies, and youth assessment placements.

(11) "Youth foster home" means a youth care facility in which substitute care is provided to one to six children or youth other than the foster parents' own children, stepchildren, or wards.

(12) "Youth group home" means a youth care facility in which substitute care is provided to 7 to 12 children or youth."

Section 8. Section 41-3-1103, MCA, is amended to read:

"41-3-1103. Powers and duties of department. (1) The department shall:

(a) administer all state and federal funds allocated to the department for youth foster homes, youth group homes, and child-care agencies, and youth assessment placements for youth in need of care, as defined in 41-5-103 41-3-102;

(b) exercise licensing authority over all youth foster homes, youth group homes, and child-care agencies, and youth assessment placements;

(c) collect and disseminate information relating to youth in need of care;

(d) provide for training of program personnel delivering services;

(e) in cooperation with youth care facility providers, develop and implement standards for youth

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care facilities;

(f) maintain adequate data on placements it funds in order to keep the legislature properly informed of the following:

(i) the number of youth in need of care in out-of-home care facilities;

(ii) the cost per facility for services rendered;

(iii) the type and level of care of services provided by each facility;

(iv) a profile of out-of-home care placements by level of care; and

(v) a profile of public institutional placements; and

(g) administer all funds allocated to the department for residential alcohol and drug abuse treatment for indigent youths in need of care, indigent youths in need of supervised intervention, and indigent delinquent youths who require treatment.

(2) The department may:

(a) enter into contracts with nonprofit corporations or associations or private organizations to provide substitute care for youth in need of care in youth care facilities;

(b) accept gifts, grants, and donations of money and property from public and private sources to initiate and maintain community-based services to youth;

(c) adopt rules to carry out the administration and purposes of this part.

(3) The department shall pay for room, board, clothing, personal needs, transportation, and treatment in youth foster care homes and youth group homes for youths committed to the department who need to be placed in the facilities. Payments for the clothing of a child placed in a youth foster home must be provided to the extent the child needs a basic wardrobe or has a special clothing need. Payments under this subsection may not exceed appropriations for the purposes of this subsection."

Section 9. Section 41-3-1114, MCA, is amended to read:

"41-3-1114. Continuing jurisdiction of youth court. The youth court committing a delinquent youth or a youth in need of supervised intervention to the department of corrections retains continuing jurisdiction over the youth until the youth becomes 21 years of age or is otherwise discharged by the department after notice to the youth court of original jurisdiction."

Section 10. Section 41-3-1122, MCA, is amended to read:

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- (a) budgets submitted by the nonprofit corporation or association identifying fixed and variable costs;
- (b) reasonable costs of service;
- (c) appropriation level; and
- (d) availability of funds.
- (2) Governmental units, including but not limited to counties, municipalities, school districts, or state institutions of higher learning, are authorized, ~~at their own expense,~~ to provide funds, materials, facilities, and services for community-based services at their own expense."

Section 12. Section 41-5-103, MCA, is amended to read:

"41-5-103. Definitions. As used in the Montana Youth Court Act, unless the context requires otherwise, the following definitions apply:

- (1) "Adult" means an individual who is 18 years of age or older.
- (2) "Agency" means any entity of state or local government authorized by law to be responsible for the care or rehabilitation of youth.
- (3) ~~"Assessment officer" means a person who is authorized by the court to provide initial intake and evaluation for a youth who appears to be in need of intervention as indicated by:~~
- ~~(a) the committing of an offense that would not be a criminal offense if committed by an adult; and~~
- ~~(b) referral of a parent or guardian, a school representative, or a law enforcement officer.~~
- ~~(2)(4) "Commit" means to transfer to legal custody.~~
- ~~(4)(5) "Correctional facility" means a public or private residential facility used for the placement of delinquent youth or individuals convicted of criminal offenses.~~
- ~~(4)(6) "Court", when used without further qualification, means the youth court of the district court.~~
- ~~(4)(7) "Custodian" means a person, other than a parent or guardian, to whom legal custody of the youth has been given but does not include a person who has only physical custody.~~
- ~~(7)(8) "Delinquent youth" means a youth~~
- ~~(a) who has committed an offense that, if committed by an adult, would constitute a criminal offense who is adjudicated under formal proceedings under the Montana Youth Court Act as a;~~
- ~~(c) serious juvenile offender;~~
- ~~(b) youth who has violated a consent decree with petition.~~

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"41-3-1122. Payment for support of youth in need of care, youth in need of supervision, intervention, or delinquent youth - reimbursement by county. (1) Whenever a youth who is a youth in need of care, a youth in need of supervision, intervention, or a delinquent youth is placed by the department of public health and human services or the department of corrections in a youth care facility, the department making the placement shall pay, within the limits of the appropriation for that purpose, a foster care payment to the youth care facility at a rate established by the department of public health and human services for the youth's board, clothing, personal needs, treatment, and room ~~at the youth's~~."

(2) On or before the 20th of each month, the department of public health and human services or the department of corrections shall present a claim to the county of residence of the youth for no more than one-half of the nonfederal share of the payments made during the month. The county shall make reimbursement to the department within 20 days after the claim is presented.

(3) Except as provided in subsection (4), when a county's level of expenditure for any year reaches the level of reimbursement for foster care in fiscal year 1987, the county has no further obligation for foster care expenditures.

(4) If a county's level of expenditure for foster care in fiscal year 1987 is ~~less~~ \$10,000 or less, the county's level of expenditure for purposes of determining the county's reimbursement specified in subsection (3) is the level of expenditures for fiscal year 1987 or the average of expenditures for fiscal years 1984 through 1987, whichever is less.

(5) A county that was state-assumed prior to 1987, but that at a later date reassumes responsibility pursuant to 53-2-811, is responsible for reimbursement of foster care expenditures up to the county's calculated level of expenditures for fiscal year 1987 as if the county had not been state-assumed.

(8) The department shall conduct or arrange for the review required under 41-3-1115, or when applicable, 41-3-1010 of a youth placed in a youth care facility if the youth is placed by the department."

Section 11. Section 41-3-1132, MCA, is amended to read:

"41-3-1132. Governmental contracts with nonprofit organizations. (1) The department of public health and human services and the department of corrections may contract with nonprofit corporations or associations to provide facilities and services for youth in need of care, youth in need of supervision, intervention, and delinquent youth in youth care facilities and are authorized to expend money that is appropriated or available for those purposes. The contracts must be based on the following considerations:

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1 (b) 7 periods or more in a week for a student from grades 9 through 12.

2 (44)(18) "Holdover" means a room, office, building, or other place approved by the board of crime

3 control for the temporary detention and supervision of youth in a physically unrestricting setting for a period

4 not to exceed 24 hours while the youth is awaiting a probable cause hearing, release, or transfer to an

5 appropriate detention or shelter care facility. The term does not include a jail.

6 (44)(19) "Jail" means a facility used for the confinement of adults accused or convicted of criminal

7 offenses. The term includes a lockup or other facility used primarily for the temporary confinement of adults

8 after arrest.

9 (44)(20) "Judge", when used without further qualification, means the judge of the youth court.

10 (44)(21) (a) "Legal custody" means the legal status created by order of a court of competent

11 jurisdiction that gives a person the right and duty to:

12 (i) have physical custody of the youth;

13 (ii) determine with whom the youth shall live and for what period;

14 (iii) protect, train, and discipline the youth; and

15 (iv) provide the youth with food, shelter, education, and ordinary medical care.

16 (b) An individual granted legal custody of a youth shall personally exercise the individual's rights

17 and duties as guardian unless otherwise authorized by the court entering the order.

18 (22) "Mentally ill" means suffering from a mental disorder that has not resulted in self-inflicted injury

19 or injury to others or the imminent threat of injury but that:

20 (a) has resulted in behavior that creates serious difficulty in protecting the person's life or health

21 even with the available assistance of family, friends, or others;

22 (b) is treatable, with a reasonable prospect of success;

23 (c) has deprived the person of the capacity to make an informed decision concerning treatment;

24 (d) has resulted in the person's refusing or being unable to consent to voluntary admission for

25 treatment; and

26 (e) poses a significant risk of the person's becoming seriously mentally ill or will, if untreated,

27 predictably result in further serious deterioration in the mental condition of the person. Predictability may

28 be established by the patient's medical history.

29 (44)(23) "Necessary parties" includes the youth; and the youth's parents, guardian, custodian, or

30 spouse.

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1 (c) youth who has violated a valid court order; or

2 (4)(d) youth who, having been placed on probation as a delinquent youth or a youth in need

3 of supervision, violates intervention and who has violated any condition of probation.

4 (49)(9) "Department" means the department of corrections provided for in 2-15-2301.

5 (49)(10) "Detention" means the holding or temporary placement of a youth in the youth's home

6 under home arrest or in a facility other than the youth's own home for;

7 (a) the purpose of ensuring the continued custody of the youth at any time after the youth is taken

8 into custody and before final disposition of the youth's case; or

9 (b) contempt of court or violation of a valid court order.

10 (49)(11) "Detention facility" means a physically restricting facility designed to prevent a youth from

11 departing at will. The term includes a youth detention facility, short-term detention center, and regional

12 detention facility.

13 (12) "Family" means the parents, guardians, legal custodians, and siblings or other youth with

14 whom a youth ordinarily lives.

15 (13) "Family assessment" means an evaluation and assessment of a youth's and a youth's family's

16 strengths and needs as determined through a multidisciplinary evaluation, including but not limited to a

17 chemical dependency evaluation, an education assessment, a mental health evaluation using the public

18 mental health program, family-based services, and other services provided by the department of public

19 health and human services or other state and local agencies.

20 (44)(14) "Final disposition" means the implementation of a court order for the disposition or

21 placement of a youth as provided in 41-5-523 and sections 33 through 40).

22 (42)(15) "Foster home" means a private residence licensed by the department of public health and

23 human services for placement of a youth.

24 (42)(16) "Guardianship" means the status created and defined by law between a youth and an adult

25 with the reciprocal rights, duties, and responsibilities. "Guardian" means an adult;

26 (a) who is responsible for a youth and has the reciprocal rights, duties, and responsibilities with

27 the youth; and

28 (b) whose status is created and defined by law.

29 (17) "Habitual truancy" means recorded absences of:

30 (a) 7 days or more in a semester for a student from grades 1 through 8; or

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1 providing food, shelter, security and safety, guidance, direction, and, if necessary, treatment to youth who
2 are removed from or are without the care and supervision of their parents or guardian guardians.

3 (35) "Victim" means:

4 (a) a person who suffers property, physical, or emotional injury as a result of an offense committed
5 by a youth that would be a felony offense if committed by an adult;

6 (b) an adult relative of the victim as defined in subsection (35)(a) if the victim is a minor; and

7 (c) an adult relative of a homicide victim.

8 (36) "Youth" means an individual who is less than 18 years of age without regard to sex or
9 emancipation.

10 (37) "Youth assessment placement" means a staff-secured location licensed by the department of
11 public health and human services in which a youth may be held for up to 10 days to ascertain a youth's
12 and a youth's family's strengths and needs, including but not limited to an evaluation of mental health,
13 chemical dependency, and abuse and neglect.

14 (38) "Youth care facility" has the meaning provided in 41-3-1102.

15 (39) "Youth court" means the court established pursuant to this chapter to hear all proceedings

16 in which a youth is alleged to be a delinquent youth, a youth in need of supervision intervention, or a youth
17 in need of care and includes the youth court judge and probation officers.

18 (40) "Youth detention facility" means a secure detention facility licensed by the department for
19 the temporary substitute care of youth that:

20 (a) is operated, administered, and staffed separately and independently of a jail; and

21 (b) is used exclusively for the lawful detention of alleged or adjudicated delinquent youth or as a
22 sanction for contempt of court or violation of a valid court order.

23 (41) "Youth in need of care" has the meaning provided for in 41-3-102.

24 (42) "Youth in need of supervision intervention" means a youth who is adjudicated as a youth
25 and who commits an offense prohibited by law that, if committed by an adult, would not constitute a

26 criminal offense, including but not limited to a youth who:

27 (a) violates any Montana municipal or state law regarding use of alcoholic beverages, tobacco
28 products, or gambling by minors;

29 (b) continues to exhibit behavior, including running away from home or habitual truancy, beyond
30 the control of the youth's parents, foster parents, physical custodian, or guardian despite the attempt of

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1 (43) "Parent" means the natural or adoptive parent but does not include a person whose
2 parental rights have been judicially terminated, nor does it include the putative father of an illegitimate youth
3 unless the putative father's paternity is established by an adjudication or by other clear and convincing
4 proof.

5 (44) "Probable cause hearing" means the hearing provided for in 41-5-303.

6 (45) "Regional detention facility" means a youth detention facility established and maintained
7 by two or more counties, as authorized in 41-5-811.

8 (46) "Restitution" means payments in cash to the victim or with services to the victim or the
9 general community when these payments are made pursuant to an informal adjustment, consent decree,
10 or other youth court order.

11 (47) "Secure detention facility" means ~~any~~ a public or private facility that:

12 (a) is used for the temporary placement of youth or individuals accused or convicted of criminal
13 offenses or as a sanction for contempt of court or violation of a valid court order; and

14 (b) is designed to physically restrict the movements and activities of youth or other individuals held
15 in lawful custody of the facility.

16 (48) "Serious juvenile offender" means a youth who has committed an offense that would be
17 considered a felony offense if committed by an adult and that is an offense against a person, an offense
18 against property, or an offense involving dangerous drugs.

19 (49) "Shelter care" means the temporary substitute care of youth in physically unrestricting
20 facilities.

21 (50) "Shelter care facility" means a facility used for the shelter care of youth. The term is
22 limited to the facilities enumerated in 41-5-308(1)(a).

23 (51) "Short-term detention center" means a detention facility licensed by the department for
24 the temporary placement or care of youth, for a period not to exceed ~~96 hours~~ 10 working days, pending
25 a probable cause hearing, release, or transfer of the youth to an appropriate detention facility, youth
26 assessment placement, or shelter care facility.

27 (52) "State youth correctional facility" means a residential facility used for the placement and
28 rehabilitation of delinquent youth, such as the Pine Hills school in Miles City ~~and the Mountain View school~~
29 in Helena.

30 (53) "Substitute care" means full-time care of youth in a residential setting for the purpose of

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1 the youth's parents, foster parents, physical custodian, or guardian to exert all reasonable efforts to
 2 mediate, resolve, or control the youth's behavior; or
 3 (c) has committed any of the acts of a delinquent youth but whom the youth court, in its
 4 discretion, chooses to regard as a youth in need of supervision intervention."

5
 6 Section 13. Section 41-5-201, MCA, is amended to read:

7 "41-5-201. Youth court judge -- judges pro tempore -- special masters. (1) Each judicial district
 8 in the state shall must have at least one judge of the youth court, the whose duties shall be are to:

9 (a) appoint and supervise qualified personnel to staff the youth division probation departments
 10 within the judicial district;

11 (b) conduct hearings on youth court proceedings under this chapter;

12 (c) perform any other functions consistent with the legislative purpose of this chapter.

13 (2) In each multijudge judicial district the judges shall, by court rule, designate one or more of their
 14 number to act as youth court judge in each county in the judicial district for a fixed period of time. Service
 15 as youth court judge may be rotated among the different judges of the judicial district and among the
 16 individual counties within the judicial district for given periods of time. Continuity of service of a given judge
 17 as youth court judge and continuity in the operation and policies of the youth court in the county having
 18 the largest population in the judicial district shall must be the principal consideration of the rule.

19 (3) (a) A youth court judge may appoint a judge pro tempore or a special master to conduct
 20 preliminary, nondispositive matters, including but not limited to hearings for probable cause or detention
 21 and taking of responses for petitions.

22 (b) A judge pro tempore or special master must be a member of the state bar of Montana."

23
 24 Section 14. Section 41-5-203, MCA, is amended to read:

25 "41-5-203. Jurisdiction of the court. (1) Except as provided in subsection (2) and for cases filed
 26 in the district court under 41-5-208, the court has exclusive original jurisdiction of all proceedings under
 27 the Montana Youth Court Act in which a youth is alleged to be a delinquent youth, a youth in need of
 28 supervision intervention, or a youth in need of care or concerning any person under 21 years of age
 29 charged with having violated any law of the state or any ordinance of any city or town other than a traffic
 30 or fish and game law prior to having become 18 years of age.

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1 (2) Justice, municipal, and city courts have concurrent jurisdiction with the youth court over all
 2 alcoholic beverage, tobacco products, and gambling violations alleged to have been committed by a youth."

3
 4 Section 15. Section 41-5-204, MCA, is amended to read:

5 "41-5-204. Venue and transfer. (1) The county where a youth is a resident or is alleged to have
 6 violated the law has initial jurisdiction over any youth alleged to be a delinquent youth. The Except as
 7 provided in 41-5-208, the youth court shall assume the initial handling of the case.

8 (2) The county where a youth is a resident has initial jurisdiction over any youth alleged to be a
 9 youth in need of supervision intervention or a youth in need of care. The youth court of that county shall
 10 assume the initial handling of the case. Transfers of venue may be made to any of the following counties
 11 in the state:

12 (a) the county in which the youth is apprehended or found;

13 (b) the county in which the youth is alleged to have violated the law; or

14 (c) the county of residence of the youth's parents or guardian.

15 (3) In the case of a youth alleged to be a youth in need of supervision intervention or a youth in
 16 need of care, a change of venue may be ordered at any time by the concurrence of the youth court judges
 17 of both counties in order to ~~ensure~~ ensure a fair, impartial, and speedy hearing and final disposition of the
 18 case.

19 (4) In the case of a youth 18 years of age or older who is accused of one of the serious offenses
 20 listed in 41-5-206, ~~the court in the county where the offense occurred shall serve as a transfer-hearing~~
 21 ~~court, and if the youth and who~~ is to be tried in district court, the charge shall must be filed and trial held
 22 in the district court of the county where the offense occurred."

23
 24 Section 18. Section 41-5-205, MCA, is amended to read:

25 "41-5-205. Retention of jurisdiction -- termination. ~~Once Except for cases filed in the district court~~
 26 ~~under 41-5-208, once~~ a court obtains jurisdiction over a youth, the court retains jurisdiction unless
 27 terminated by the court or by mandatory termination in the following cases:

28 (1) at the time the proceedings are transferred to adult criminal court;

29 (2) at the time the youth is discharged by the department; and

30 (3) in any event, at the time the youth reaches the ~~age of~~ 21 years of age."

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Section 17. Section 41-5-206, MCA, is amended to read:

"41-5-206. Transfer to criminal filing in district court prior to prosecution formal proceedings in youth court. (1) After a petition has been filed alleging delinquency, the court may, upon motion of the county attorney, before hearing the petition on its merits, transfer the matter of prosecution to the district court if:

(a)-(4) The county attorney may, in the county attorney's discretion, file with the district court a motion for leave to file an information in the district court if:

(a) the youth charged was 12 years of age or more older at the time of the conduct alleged to be unlawful and the unlawful act would if it had been committed by an adult constitute;

(ii) sexual intercourse without consent as defined in 45-5-503;

(iii) deliberate homicide as defined in 45-5-102;

(iv) mitigated deliberate homicide as defined in 45-5-103; or

(v) the attempt, as defined in 45-4-103, of or accountability, as provided in 45-2-301, for either deliberate or mitigated deliberate homicide if the act had been committed by an adult; or

(b) the youth charged was 10 years of age or more older at the time of the conduct alleged to be unlawful and the unlawful act is one or more of the following:

(A)(i) negligent homicide as defined in 45-5-104;

(B)(ii) arson as defined in 45-6-103;

(C)(iii) aggravated or felony assault as defined in 45-5-202;

(D)(iv) robbery as defined in 45-5-401;

(E)(v) burglary or aggravated burglary as defined in 45-6-204;

(F)(vi) aggravated kidnapping as defined in 45-5-303;

(G)(vii) possession of explosives as defined in 45-6-335;

(H)(viii) criminal sale of dangerous drugs as defined in 45-9-101;

(I)(ix) criminal production or manufacture of dangerous drugs as defined in 45-9-110;

(J)(x) attempt, as defined in 45-4-103, of or accountability, as provided in 45-2-301, for any of the acts enumerated in subsections (A)(i) through (H)(ix);

(b) a hearing on whether the transfer should be made is held in conformity with the rules on a hearing on a petition alleging delinquency, except that the hearing must be conducted by the youth court without a jury.

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(a) notice in writing of the time, place, and purpose of the hearing is given to the youth, the youth's counsel, and the youth's parents, guardian, or custodian at least 10 days before the hearing; and

(a) the court finds upon the hearing of all relevant evidence that there is probable cause to believe that:

(i) the youth committed the delinquent act alleged;

(iii) the seriousness of the offense and the protection of the community require treatment of the youth beyond that afforded by juvenile facilities; and

(iii) the alleged offense was committed in an aggressive, violent, or premeditated manner.

(2) In transferring the matter of prosecution to the district court, the court may also consider the following factors:

(a) the sophistication and maturity of the youth, determined by consideration of the youth's home, environmental situation, and emotional attitude and pattern of living;

(b) the record and previous history of the youth, including previous contacts with the youth court, law enforcement agencies, youth courts in other jurisdictions, prior periods of probation, and prior commitments to juvenile institutions. However, lack of a prior juvenile history with youth courts is not of itself grounds for denying the transfer.

(3) The court shall grant the motion to transfer if the youth was 16 years old or older at the time of the conduct alleged to be unlawful and the unlawful act would constitute deliberate homicide as defined in 45-5-103, mitigated deliberate homicide as defined in 45-5-103, or the attempt as defined in 45-4-103, of either deliberate or mitigated deliberate homicide if the act had been committed by an adult.

(4) Upon transfer to district court, the judge shall make written findings of the reasons why the jurisdiction of the youth court was waived and the case transferred to district court.

(5)(2) The transfer filing of an information in district court terminates the jurisdiction of the youth court over the youth with respect to the acts alleged in the petition information. A youth may not be prosecuted in the district court for a criminal offense originally subject to the jurisdiction of the youth court unless the case has been transferred filed in the district court as provided in this section. A case may be transferred to district court after prosecution as provided in 41-5-208 or 41-5-1105.

(6) Upon order of the youth court transferring the case to the district court under subsection (b), the county attorney shall file the information against the youth without unreasonable delay.

(7)(3) Any offense not enumerated in subsection (1) that arises during the commission of a

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1 crime enumerated in subsection (1) may be:

2 (a) tried in youth court;

3 (b) transferred to district court with an offense enumerated in subsection (1); upon motion of the

4 county attorney and order of the youth district court judge.

5 (4) if a youth is found guilty in district court of any of the offenses transferred by the youth

6 court enumerated in subsection (1) and is sentenced to the state prison, the commitment must be to the

7 department of corrections. The department shall confine the youth in whatever institution that it considers

8 proper, including a state youth correctional facility under the procedures of 52-5-111. However, a youth

9 under 16 years of age may not be confined in the state prison.

10 (5) A youth whose case is transferred to filed in the district court may not be detained or

11 otherwise placed in a jail or other adult detention facility before final disposition of the youth's case unless:

12 (a) alternative facilities do not provide adequate security; and

13 (b) the youth is kept in an area that provides physical separation as well as sight and sound

14 separation from adults accused or convicted of criminal offenses."

15

16 Section 18. Section 41-5-208, MCA, is amended to read:

17 "41-5-208. Transfer of supervisory responsibility to district court after prearrest— juvenile

18 disposition in district court — limitation on jurisdiction nonextended jurisdiction and nontransferred cases.

19 (1) After adjudication by the court of a case that was not transferred to district court under 41-5-208

20 and that was not prosecuted as an extended jurisdiction juvenile prosecution under part 11 of this chapter,

21 the court may, on its own motion or the motion of the county attorney, transfer jurisdiction to the district

22 court and order the transfer of supervisory responsibility from juvenile probation services to adult probation

23 services. A transfer under this section may be made to ensure continued compliance with the court's

24 disposition under 41-5-523, or [section 33] and may be made at any time after a youth reaches 18 years

25 of age but before the youth reaches 21 years of age; the youth court judge may transfer jurisdiction to the

26 district court and order the transfer of supervisory responsibility and the youth's case files to the

27 department.

28 (2) Before transfer, the court shall hold a hearing on whether the transfer should be made. The

29 hearing must be held in conformity with the rules for a hearing on a petition alleging delinquency, except

30 that the hearing must be conducted by the court without a jury. The court shall give the youth, the youth's

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1 counsel, and the youth's parents, guardian, or custodian notice in writing of the time, place, and purpose

2 of the hearing at least 10 days before the hearing. At the hearing, the youth is entitled to:

3 (a) receive written notice of the motion to transfer;

4 (b) an opportunity to be heard in person and to present witnesses and evidence;

5 (c) receive a written statement by the court of the evidence relied on and the reasons for the

6 transfer;

7 (d) the right to cross-examine witnesses, unless the court finds good cause for not allowing

8 confrontation; and

9 (e) the right to counsel.

10 (3) After the hearing, if the court finds by a preponderance of the evidence that transfer of

11 continuing supervisory responsibility to the district court is appropriate, the court shall order the transfer.

12 (4) If a youth whose case has been transferred to district court under this section violates a

13 disposition previously imposed under 41-5-523, the district court may, after hearing, impose conditions as

14 provided under 48-18-201 through 48-18-203.

15 (5) If, at the time of transfer, the youth is incarcerated in a state youth correctional facility, the

16 district court may order that the youth, after reaching 18 years of age:

17 (a) be incarcerated in a state adult correctional facility, boot camp, or prerelease center; or

18 (b) be supervised by the department.

19 (6) The district court's jurisdiction over a case transferred under this section terminates when

20 the youth reaches 25 years of age."

21

22 Section 19. Section 41-5-301, MCA, is amended to read:

23 "41-5-301. Preliminary investigation and disposition. (1) Whenever the court receives information

24 from any agency or person, based upon reasonable grounds, that a youth is or appears to be a

25 delinquent youth or a youth in need of supervised intervention or being that the youth is subject to a court

26 order or consent order, and has violated the terms of an order, a probation officer or an assessment officer

27 shall make a preliminary inquiry into the matter.

28 (2) The probation officer or assessment officer may:

29 (a) require the presence of any person relevant to the inquiry;

30 (b) request subpoenas from the judge to accomplish this purpose;

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(8) The county attorney may apply to the youth court for permission to file a petition charging a youth to be a delinquent youth or a youth in need of supervision intervention. The application must be supported by evidence that the youth court may require. If it appears that there is probable cause to believe that the allegations of the petition are true, the youth court shall grant leave to file the petition.

(7) A petition charging a youth who is held in detention or youth assessment placement must be filed within 7 working days from the date the youth was first taken into custody or the petition must be dismissed and the youth released unless good cause is shown to further detain the youth.

(8) If a petition is not filed under this section, the complainant and victim, if any, must be informed by the probation officer or assessment officer of the action and the reasons for not filing and must be advised of the right to submit the matter to the county attorney for review. The county attorney, upon receiving a request for review, shall consider the facts, consult with the probation officer or assessment officer, and make the final decision as to whether a petition is filed."

Section 20. Section 41-5-303, MCA, is amended to read:

"41-5-303. Rights of youth taken into custody — questioning — hearing for probable cause — detention. (1) When a youth is taken into custody for questioning upon a matter that could result in a petition alleging that the youth is either a delinquent youth or a youth in need of supervision intervention, the following requirements must be met:

- (a) The youth must be advised of his the youth's right against self-incrimination and his the youth's right to counsel.
- (b) The youth may waive these rights under the following situations:
 - (i) when the youth is 16 years of age or older, the youth may make an effective waiver;
 - (ii) when the youth is under the age of 16 years of age and the youth and a parent or guardian agree, they may make an effective waiver; and
 - (iii) when the youth is under the age of 16 years of age and the youth and his the youth's parent or guardian do not agree, the youth may make an effective waiver only with advice of counsel.
- (c) The investigating officer, probation officer, or person assigned to give notice shall immediately notify the parents, guardian, or legal custodian of the youth that the youth has been taken into custody, the reasons for taking the youth into custody, and where the youth is being held. If the parents, guardian, or legal custodian cannot be found through diligent efforts, a close relative or friend chosen by the youth

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- (c) require investigation of the matter by any law enforcement agency or any other appropriate state or local agency.
- (3) If the probation officer or assessment officer determines that the facts indicate that the youth is a youth in need of care, the matter must be immediately referred to the department of public health and human services.
- (4) (a) The probation officer or assessment officer in the conduct of the preliminary inquiry shall:
 - (i) advise the youth of the youth's rights under this chapter and the constitutions of the state of Montana and the United States;
 - (ii) determine whether the matter is within the jurisdiction of the court;
 - (iii) determine, if the youth is in detention, youth assessment placement, or shelter care, whether detention, youth assessment placement, or shelter care should be continued or modified based upon criteria set forth in 41-5-305.
- (b) Once relevant information is secured, the probation officer or assessment officer shall:
 - (i) determine whether the interest of the public or the youth requires that further action be taken;
 - (ii) terminate the inquiry upon the determination that no further action be taken; and
 - (iii) release the youth immediately upon the determination that the filing of a petition is not authorized.
- (5) The probation officer or assessment officer upon determining that further action is required may:
 - (a) provide counseling, refer the youth and the youth's parent family to another agency providing appropriate services, or take any other action or make any informal adjustment that does not involve probation or detention;
 - (b) provide for treatment or adjustment involving probation or other disposition authorized under 41-5-401 through 41-5-403 if the treatment or adjustment is voluntarily accepted by the youth's parent or guardian and the youth, if the matter is referred immediately to the county attorney for review, and if the probation officer or assessment officer proceeds no further unless authorized by the county attorney;
- or
- (c) refer the matter to the county attorney for filing a petition in youth court charging the youth to be a delinquent youth or a youth in need of supervision intervention or for filing an information in the district court as provided in 41-5-206.

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1 must be notified.

(2) Unless a youth has been released, a hearing must be held within 24 hours after the youth is taken into custody, excluding weekends and legal holidays, to determine whether there is probable cause to believe that the youth is a delinquent youth or a youth in need of supervision intervention.

(3) The probable cause hearing required under subsection (2) may be held by the youth court, a justice of the peace, a municipal or city judge, or a magistrate having jurisdiction in the case as provided in 41-5-203. If the probable cause hearing is held by a justice of the peace, a municipal or city judge, or a magistrate, a record of the hearing must be made by a court reporter or by a tape recording of the hearing.

(4) At the probable cause hearing, the youth must be informed of the youth's constitutional rights and the youth's rights under this chapter.

(5) A parent, guardian, or legal custodian of the youth may be held in contempt of court for failing to be present at or to participate in the probable cause hearing unless he the parent, guardian, or legal custodian:

(a) cannot be located through diligent efforts of the investigating peace officer or peace officers;

or

(b) is excused by the court for good cause.

(6) At the probable cause hearing, a guardian ad litem may be appointed as provided in 41-5-512.

(7) If it is determined that there is probable cause to believe that the youth is a delinquent youth or is a youth in need of supervision intervention, the court having jurisdiction in the case shall determine whether the youth should be retained in custody. If the court determines that continued custody of the youth is necessary and if the youth meets the criteria in 41-5-305, the youth may be placed in a detention facility, a youth assessment placement, or a shelter care facility as provided in 41-5-306 but may not be placed in a jail or other facility used for the confinement of adults accused or convicted of criminal offenses.

(8) If probable cause is not found or if a probable cause hearing is not held within the time specified in subsection (2), the youth must be immediately released from custody."

Section 21. Section 41-5-304, MCA, is amended to read:

"41-5-304. Investigation, fingerprints, and photographs. (1) All law enforcement investigations relating to a delinquent youth or youth in need of supervision intervention must be conducted in accordance

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1 with this chapter and Title 46.

(2) A youth may be fingerprinted or photographed for criminal identification purposes:

(a) if arrested for conduct alleged to be unlawful that would be a felony if committed by an adult;

(b) pursuant to a search warrant, supported by probable cause, issued by a judge, justice of the peace, or magistrate; or

(c) upon the order of the youth court judge, after a petition alleging delinquency has been filed in which the unlawful act alleged is a felony.

(3) Fingerprint records and photographs may be used by the department of justice or any law enforcement agency in the judicial district for comparison and identification purposes in any other investigation."

Section 22. Section 41-5-305, MCA, is amended to read:

"41-5-305. Criteria for placement of youth in secure detention facilities, youth assessment placements, or shelter care facilities. (1) A youth may not be placed in a secure detention facility unless:

(a) he the youth has allegedly committed an act that if committed by an adult would constitute a criminal offense and the alleged offense is one specified in 41-5-208;

(b) he the youth is alleged to be a delinquent youth and:

(i) he the youth has escaped from a correctional facility or secure detention facility;

(ii) he the youth has violated a valid court order or an aftercare agreement;

(iii) he the youth's detention is required to protect persons or property;

(iv) he the youth has pending court or administrative action or is awaiting a transfer to another jurisdiction and may abscond or be removed from the jurisdiction of the court;

(v) there are not adequate assurances that he the youth will appear for court when required; or

(vi) he the youth meets additional criteria for secure detention established by the youth court in the judicial district that has current jurisdiction over him the youth; or

(c) he the youth has been adjudicated delinquent and is awaiting final disposition of his the youth's case.

(2) A youth may not be placed in a shelter care facility unless:

(a) the youth and his the youth's family need shelter care to address their problematic situation when it is not possible for the youth to remain at home;

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1 ~~subsection (4)~~ by the department of public health and human services as provided in Title 41, chapter 3,
 2 and may not be placed in a youth assessment placement or in a jail or other facility intended or used for
 3 the confinement of adults accused or convicted of criminal offenses.

4 (3) After a probable cause hearing provided for in 41-5-303, a youth alleged to be a delinquent
 5 youth may be placed only:

6 (a) in the facilities described in subsection (1);

7 (b) under home arrest as provided in subsection (1);

8 (c) in a short-term detention center;

9 (d) in a youth detention facility; or

10 (e) in a community youth court program."

11
 12 Section 24. Section 41-5-401, MCA, is amended to read:
 13 "41-5-401. Consent adjustment without petition. (1) Before a petition is filed relating the matter

14 to the county attorney and subject to the limitations in subsection (3), the probation officer of assessment
 15 officer may enter into an informal adjustment and give counsel and advice to the youth, the youth's family,
 16 and other interested parties if it appears that:

17 (a) the admitted facts bring the case within the jurisdiction of the court;

18 (b) counsel and advice without filing a petition would be in the best interests of the child, the
 19 family, and the public; and

20 (c) the youth may be a youth in need of supervision intervention and if the probation officer or
 21 assessment officer believes that the parents, foster parents, physical custodian, or guardian exerted all
 22 reasonable efforts to mediate, resolve, or control the youth's behavior and the youth continues to exhibit
 23 behavior beyond the control of the parents, foster parents, physical custodian, or guardian.

24 (2) Any probation or other disposition imposed under this section against any a youth must
 25 conform to the following procedures:

26 (a) Every consent adjustment shall must be reduced to writing and signed by the youth and the the
 27 youth's parents or the person having legal custody of the youth.

28 (b) If the probation officer or assessment officer believes the youth is a youth in need of
 29 supervision intervention, the probation officer or assessment officer shall determine that the parents, foster
 30 parents, physical custodian, or guardian exerted all reasonable efforts to mediate, resolve, or control the

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1 (b) the youth needs to be protected from physical or emotional harm;

2 (c) the youth needs to be deterred or prevented from immediate repetition of the the youth's

3 troubling behavior;

4 (d) shelter care is necessary to assess the youth and the the youth's environment;

5 (e) shelter care is necessary to provide adequate time for case planning and disposition; or

6 (f) shelter care is necessary to intervene in a crisis situation and provide intensive services or

7 attention that might alleviate the problem and reunite the family.

8 (3) A youth may not be placed in a youth assessment placement unless:

9 (a) the youth meets the requirements for placement in shelter care;

10 (b) the youth has not committed an act that would be a felony offense if committed by an adult;

11 (c) the youth needs an alternative, self-secured site for evaluation and assessment of the youth's

12 and the youth's family's need for services;

13 (d) the youth needs to be held accountable for the youth's actions with structured programming;

14 and

15 (e) the youth meets qualifications as outlined by the placement guidelines that are determined by

16 the department and coordinated with the guidelines used by the youth placement committee."

17

18 Section 23. Section 41-5-308, MCA, is amended to read:

19 "41-5-308. Place of shelter care, youth assessment, or detention. (1) After a probable cause

20 hearing provided for in 41-5-303, a youth alleged to be a youth in need of supervision intervention may be

21 placed only:

22 (a) in a licensed youth foster home as defined in 41-3-1102;

23 (b) in a facility operated by a licensed child-welfare agency;

24 (c) in a licensed youth group home as defined in 41-3-1102; or

25 (d) in a licensed youth care facility as defined in 41-3-1102;

26 (e) in a youth assessment placement; or

27 (f) under home arrest, with or without a monitoring device, either in the youth's own home or

28 in one of the facilities described in subsection (1) through (f) a licensed youth care facility, as

29 provided in Title 48, chapter 18, part 10.

30 (2) A youth alleged to be a youth in need of care may be placed only in the facilities listed in

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1 youth's behavior and the youth continues to exhibit behavior beyond the control of the parents, foster
 2 parents, physical custodian, or guardian.
 3 (c) Approval by the youth court judge is required if the complaint alleges commission of a felony
 4 or if the youth has been or will be in any way detained.
 5 (3) A consent adjustment without petition under this section may not be used to dispose of a
 6 youth's alleged second or subsequent offense if that offense would be a felony if committed by an adult."
 7
 8 Section 25, Section 41-5-403, MCA, is amended to read:
 9 "41-5-403. Disposition permitted under informal adjustment -- contributions by parents or
 10 guardians for youth's care. (1) The following dispositions may be imposed by informal adjustment:
 11 (a) probation;
 12 (b) placement of the youth in substitute care in a youth care facility, as defined in 41-3-1102, and
 13 as determined by the department pursuant to a recommendation made under 41-5-525;
 14 (c) placement of the youth with a private agency responsible for the care and rehabilitation of the
 15 youth as determined by the department pursuant to a recommendation made under 41-5-525;
 16 (d) restitution, as provided in Section 31, upon approval of the youth court judge;
 17 (e) placement of the youth under home arrest as provided in Title 46, chapter 18, part 10;
 18 (f) a requirement that the youth, the youth's parents, guardians, or family, or the persons having
 19 legal custody of the youth receive counseling services;
 20 (g) placement in a youth assessment placement for up to 10 days;
 21 (h) placement of the youth in detention for up to 3 days on a space-available basis;
 22 (i) a requirement that the youth perform community service;
 23 (j) a requirement that the youth participate in victim-offender mediation;
 24 (k) an order that the youth or the youth's parents or guardians pay a contribution covering all or
 25 a part of the costs for the adjudication, disposition, supervision, care, custody, and treatment of the youth,
 26 including the costs of court-appointed counseling;
 27 (l) an order that the youth or the youth's parents or guardians pay a contribution covering all or
 28 a part of the costs of a victim's counseling or restitution for damages that result from the offense for which
 29 the youth is disposed.
 30 (2) In determining whether restitution is appropriate in a particular case, the following factors may

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1 be considered in addition to any other evidence;
 2 (a) age of the youth;
 3 (b) ability of the youth to pay;
 4 (c) ability of the parent, legal guardian, or persons contributing to the youth's delinquency or need
 5 for supervision to pay;
 6 (d) amount of damage to the victim and
 7 legal remedies of the victim. However, the ability of the victim or the victim's insurer to stand
 8 any loss may not be considered in any case;
 9 (2) If the youth violates an aftercare agreement as provided for in 52-5-128, the youth must be
 10 returned to the court for further disposition. A youth may not be placed in a state youth correctional facility
 11 under informal adjustment.
 12 (4) If the youth is placed in substitute care, an assessment placement, or detention requiring
 13 payment by the any state department or local government agency, the court shall examine the financial
 14 ability of the youth's parents or guardians to pay a contribution covering all or part of the costs for the
 15 adjudication, disposition, supervision, care, placement, and treatment of the youth, including the costs of
 16 necessary medical, dental, and other health care.
 17 (5) If the court determines that the youth's parents or guardians are financially able to pay a
 18 contribution as provided in subsection (4) (3), the court shall order the youth's parents or guardians to pay
 19 an amount attributable to care, custody, and treatment based on the uniform child support guidelines
 20 adopted by the department of public health and human services pursuant to 40-5-209. The order must
 21 state to which state or local agency all or a part of the contribution is due and in what order the payments
 22 will be made.
 23 (5) (a) Except as provided in subsection (4) (b), contributions ordered under this section
 24 and each modification of an existing order are enforceable by immediate or delinquency income withholding,
 25 or both, under Title 40, chapter 5, part 4. An order for contribution that is inconsistent with this section
 26 is nevertheless subject to withholding for the payment of the contribution without need for an amendment
 27 of the support order or for any further action by the court.
 28 (b) A court-ordered exception from contributions under this section must be in writing and be
 29 included in the order. An exception from the immediate income withholding requirement may be granted
 30 if the court finds there is:

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1 alleged to have violated;
 2 (c) state the facts constituting the offense in ordinary and concise language and in such a manner
 3 as to enable the trier of fact to understand the nature of the offense and to know what is intended; and
 4 (d) state the time and place of the offense as definitely as can be determined possible;
 5 (3) the name, birth date, and residence address of the youth;
 6 (4) the names and residence addresses of the parents, guardian, and spouse of the youth and,
 7 if none of the parents, guardian, or spouse resides in the county, the names and residence addresses of the youth's
 8 nearest relatives, or if there is none, the adult relative residing nearest to the court;
 9 (5) whether the youth is in detention, youth assessment placement, or shelter care and, if so, the
 10 place of detention, youth assessment placement, or shelter care and the time the youth was detained
 11 or sheltered;
 12 (6) if any of the matters required to be set forth by this section are not known, a statement of
 13 those matters and the fact that they are not known; and
 14 (7) a list of witnesses to be used in proving the commission of the offense or offenses charged in
 15 the petition, together with their residence addresses. The names and addresses of any witnesses discovered
 16 after the filing of the petition shall be furnished to the youth upon request."

Section 27. Section 41-5-511, MCA, is amended to read:

"41-5-511. Right to counsel. In all proceedings following the filing of a petition alleging that a
 youth is a delinquent youth or youth in need of supervision intervention, the youth and the parents or
 guardian of the youth shall be advised by the court or, in the absence of the court, by its
 representative that the youth may be represented by counsel at all stages of the proceedings. If counsel
 is not retained or if it appears that counsel will not be retained, counsel shall be appointed for the
 youth if the parents or guardian and the youth are unable to provide counsel unless the right to appointed
 counsel is waived by the youth and the parents or guardian. Neither the youth nor his parents or guardian
 shall be appointed guardian or guardian may waive counsel after a petition has been filed if commitment to the department for
 a period of more than 8 months may result from adjudication."

Section 28. Section 41-5-515, MCA, is amended to read:

"41-5-515. Persons to be advised of rights, rights, and obligations — persons to be advised —

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1 (i) good cause not to require immediate income withholding; or
 2 (ii) an alternative arrangement between the department and the person who is ordered to pay
 3 contributions.
 4 (c) A finding of good cause not to require immediate income withholding must, at a minimum, be
 5 based upon:
 6 (i) a written determination and explanation by the court of the reasons why the implementation of
 7 immediate income withholding is not in the best interests of the child; and
 8 (ii) proof of timely payment of previously ordered support in cases involving modification of
 9 contributions ordered under this section.
 10 (d) An alternative arrangement must:
 11 (i) provide sufficient security to ensure compliance with the arrangement;
 12 (ii) be in writing and be signed by a representative of the department and the person required to
 13 make contributions; and
 14 (iii) if approved by the court, be entered into the record of the proceeding.
 15 (4) (b) (i) If the court orders the payment of contributions under this section, the department shall
 16 apply to the department of public health and human services for support enforcement services pursuant
 17 to Title IV-D of the Social Security Act.
 18 (b) The department of public health and human services may collect and enforce a contribution
 19 order under this section by any means available under law, including the remedies provided for in Title 40,
 20 chapter 5, parts 2 and 4."

Section 28. Section 41-5-501, MCA, is amended to read:

"41-5-501. Petition — form and content. A petition initiating proceedings under this chapter shall
 be signed by the county attorney, and shall be entitled "In the Matter of a youth", and shall
 set forth with specificity:

- (1) the facts necessary to invoke the jurisdiction of the court, together with a statement alleging
 the youth to be a delinquent youth or a youth in need of supervision intervention;
- (2) the charge of an offense, which shall be;
- (e) state the name of the offense;
- (b) cite in customary form the statute, rule, or other provisions of law which the youth is

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1 contempt. (1) Persons A person afforded rights under this chapter shall must be advised of those rights
 2 and any other rights existing under law at the time of their the person's first appearance in a proceeding
 3 on a petition under the Montana Youth Court Act and at any other time specified in that act or other law.
 4 (2) A person must be advised of obligations that may arise under this chapter, including the
 5 possibility that the person may be required to reimburse the state or local governments for costs attributable
 6 to the adjudication, disposition, supervision, care, custody, and treatment of the youth and may be required
 7 to participate in counseling, treatment, or other support services.

8 (3) A youth's parents or guardians are obligated to assist and support the youth court in
 9 implementing the court's orders concerning a youth under youth court jurisdiction, and the parents or
 10 guardians are subject to the court's contempt powers if they fail to do so."

12 Section 29. Section 41-5-521, MCA, is amended to read:

13 "41-5-521. Adjudicatory hearing. (1) Prior to any adjudicatory hearing, the court shall determine
 14 whether the youth admits or denies the offenses alleged in the petition. If the youth denies all offenses
 15 alleged in the petition, the youth or the youth's parent, guardian, or attorney may demand a jury trial on
 16 the contested offenses. In the absence of a demand, a jury trial is waived. If the youth denies some
 17 offenses and admits others, the contested offenses may be dismissed in the discretion of the youth court
 18 judge. The adjudicatory hearing must be set immediately and accorded a preferential priority.

19 (2) An adjudicatory hearing must be held to determine whether the contested offenses are
 20 supported by proof beyond a reasonable doubt in cases involving a youth alleged to be delinquent or in
 21 need of supervision intervention. If the hearing is before a jury, the jury's function is to determine whether
 22 the youth committed the contested offenses. If the hearing is before the youth court judge without a jury,
 23 the judge shall make and record findings on all issues, if the allegations of the petitions are not established
 24 at the hearing, the youth court shall dismiss the petition and discharge the youth from custody.

25 (3) An adjudicatory hearing must be recorded verbatim by whatever means the court considers
 26 appropriate.

27 (4) The youth charged in a petition must be present at the hearing and, if brought from detention
 28 to the hearing, may not appear clothed in institutional clothing.

29 (5) In a hearing on a petition under this section, the general public may not be excluded, except
 30 that in the court's discretion, the general public may be excluded if the petition does not allege that the

1 youth is delinquent.

2 (6) If, on the basis of a valid admission by a youth of the allegations of the petition or after the
 3 hearing required by this section, a youth is found to be a delinquent youth or a youth in need of supervision
 4 intervention, the court shall schedule a dispositional hearing under this chapter.

5 (7) When a jury trial is required in a case, it may be held before a jury selected as provided in Title
 6 26, chapter 7, part 2, and in Rule 47, M.R.Civ.P."

8 Section 30. Section 41-5-522, MCA, is amended to read:

9 "41-5-522. Dispositional hearing -- contributions by parents or guardians for expenses. (1) As soon
 10 as practicable after a youth is found to be a delinquent youth or a youth in need of supervision intervention,
 11 the court shall conduct a dispositional hearing. The dispositional hearing may involve a determination of the
 12 financial ability of the youth's parents or guardians to pay a contribution for the cost of the adjudication,
 13 disposition, supervision, care, commitment, and treatment of the youth as required in 41-5-523 or section
 14 331, including the costs of necessary medical, dental, and other health care.

15 (2) Before conducting the dispositional hearing, the court shall direct that a social summary, family
 16 assessment, or predisposition report be made in writing by a probation officer concerning the youth, the
 17 youth's family, the youth's environment, and other matters relevant to the need for care or rehabilitation
 18 or disposition of the case. The youth court may have the youth examined, and the results of the
 19 examination must be made available to the court as part of the social summary, family assessment, or
 20 predisposition report. The court may order the examination of a parent or guardian whose ability to care
 21 for or supervise a youth is at issue before the court. The results of the examination must be included in the
 22 social summary, family assessment, or predisposition report. The youth or the youth's parents, guardian,
 23 or counsel has the right to subpoena all persons who have prepared any portion of the social summary,
 24 family assessment, or predisposition report and has the right to cross-examine the parties at the
 25 dispositional hearing.

26 (3) Defense counsel must be furnished with a copy of the social summary, family assessment, or
 27 predisposition report and psychological report prior to the dispositional hearing.

28 (4) The dispositional hearing must be conducted in the manner set forth in subsections (3), (4), and
 29 (5) of 41-5-521. The court shall hear all evidence relevant to a proper disposition of the case best serving
 30 the interests of the youth and the public. The evidence must include but is not limited to the social

1 of youth—restoration. (4) If a youth is found to be a delinquent youth or a youth in need of supervision
 2 intervention or to have violated an informal consent adjustment, the youth court may enter its judgment
 3 making one or more of the following dispositions:

4 (a) retain jurisdiction in a disposition provided under subsection (1)(b) or (1)(d);
 5 (b)(1) place the youth on probation; The youth court shall retain jurisdiction in a disposition under
 6 this subsection.

7 (c) subject to subsections (1)(a)(i), (2)(a), (2)(b), and (6), sentence a youth to one of the state
 8 youth correctional facilities established under 52-5-101 and, as part of the sentence, deny the youth
 9 eligibility for release without the express approval of the sentencing judge until the youth reaches 18 years
 10 of age. A youth may not be sentenced to a state youth correctional facility unless the department informs
 11 the judge that space is available for the youth at that facility. The sentencing judge may not place
 12 limitations on the release unless recommended by the youth placement committee.

13 (d) require a youth found to be delinquent to register as a sex offender pursuant to 46-18-254 and
 14 46-23-508;

15 (e)(2) place the youth in an in-state residence that ensures that the youth is accountable, that
 16 provides for rehabilitation, and that protects the public. Before placement, the sentencing judge shall seek
 17 and consider placement recommendations from the youth placement committee. The judge may not place
 18 the youth in an in-state residence unless the department informs the judge that resources are available for
 19 placement of the youth at that residence.

20 (f)(3) commit the youth to the department, with the following conditions:

21 (a) in an order committing a youth to the department;
 22 (4) the court shall determine whether continuation in the youth's own home would be contrary to
 23 the welfare of the youth and whether reasonable efforts have been made to prevent or eliminate the need
 24 for removal of the youth from the youth's home;

25 (ii) in the case of a delinquent youth who is determined by the court to be a serious juvenile
 26 offender, the judge may specify that the youth be placed in a state youth correctional facility if the judge
 27 finds that the placement is necessary for the protection of the public. The court may order the department
 28 to notify the court within 5 working days before the proposed release of a youth from a youth correctional
 29 facility. Once a youth is committed to the department for placement in a state youth correctional facility,
 30 the department is responsible for determining an appropriate date of release into an appropriate placement.

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1 summary, family assessment, and predisposition report provided for in subsection (2) of this section.

2 (5) If the court finds that it is in the best interest of the youth, the youth or the youth's parents
 3 or guardian may be temporarily excluded from the hearing during the taking of evidence on the issues of
 4 need for treatment and rehabilitation.

5 (6) In determining whether restitution, as authorized by 41-5-523, is appropriate in a particular
 6 case, the following factors may be considered in addition to any other evidence:

7 (a) age of the youth;

8 (b) ability of the youth to pay;

9 (c) ability of the parents, legal guardian, or those that contributed to the youth's delinquency or
 10 need for supervision to pay;

11 (d) amount of damage to the victim; and

12 (e) legal remedies of the victim. However, the ability of the victim or the victim's insurer to extend
 13 any loss may not be considered in any case."

14
 15 NEW SECTION. Section 31. Restitution. (1) In determining whether restitution, as authorized by
 16 41-5-403 and 41-5-523, is appropriate in a particular case, the following factors may be considered in
 17 addition to any other evidence:

18 (a) the age of the youth;

19 (b) the ability of the youth to pay;

20 (c) the ability of the parents, guardian, or those that contributed to the youth's delinquency or need
 21 for supervision to pay;

22 (d) the amount of damage to the victim; and

23 (e) legal remedies of the victim. However, the ability of the victim or the victim's insurer to extend
 24 any loss may not be considered.

25 (2) Restitution paid by a youth or a youth's parents or guardians is subject to subrogation as
 26 provided in 46-18-248.

27
 28 Section 32. Section 41-5-523, MCA, is amended to read:

29 "41-5-523. Disposition of youth in need of intervention or youth who violate informal consent
 30 adjustment—sentence to correctional facility—commitment to department—placement and evaluation

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1 (b) The department may not place a youth in need of intervention, a youth adjudicated delinquent
 2 for commission of an act that would not be an offense if committed by an adult, or a youth who violates
 3 an informal consent adjustment in a state youth correctional facility.

4 (e)(4) order restitution for damages that result from the offense for which the youth is disposed
 5 by the youth or the youth's parents or guardians;

6 (4) impose a fine as authorized by law if the violation alleged would constitute a criminal offense
 7 if committed by an adult;

8 (4)(5) require the performance of community service;

9 (4)(6) require the youth, the youth's parents or guardians, or the persons having legal custody of
 10 the youth to receive counseling services;

11 (4)(7) require the medical and psychological evaluation of the youth, the youth's parents or
 12 guardians, or the persons having legal custody of the youth;

13 (4)(9) require the parents, guardians, or other persons having legal custody of the youth to furnish
 14 services the court may designate;

15 (4)(9) order further care, treatment, evaluation, or relief that the court considers beneficial to the
 16 youth and the community and that does not obligate funding from the department for services outside the
 17 state of Montana without the department's approval, except that a youth may not be placed by a youth
 18 court in a residential treatment facility as defined in 50-5-101. Only the department may, pursuant to
 19 subsection (4)(4) [3] of this section, place a youth in a residential treatment facility.

20 (4)(10) subject to the provisions of [section 35], commit the youth to a mental health facility if,
 21 based upon the testimony of a professional person as defined in 53-21-102, the court finds that the youth
 22 is seriously mentally ill as defined in 53-21-102; The youth is entitled to all rights provided by 53-21-114
 23 through 53-21-119,

24 (4) A youth adjudicated mentally ill or seriously mentally ill as defined in 53-21-102 may not be
 25 committed or sentenced to a state youth correctional facility.

26 (4) A youth adjudicated to be mentally ill or seriously mentally ill after placement in or sentencing
 27 to a state youth correctional facility must be moved to a more appropriate placement in response to the
 28 youth's mental health needs and consistent with the disposition alternatives available in 53-21-127.

29 (e)(11) place the youth under home arrest as provided in Title 46, chapter 18, part 10;

30 (12) order the youth or the youth's parents or guardians to pay a contribution covering all or a part

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1 of the costs for the adjudication, disposition, supervision, care, custody, and treatment of the youth,
 2 including the costs of court-appointed counseling;

3 (13) order the youth or the youth's parents or guardians to pay a contribution covering all or a part
 4 of the costs of a victim's counseling;

5 (14) defer imposition of sentence for up to 45 days for a placement evaluation at a suitable
 6 program or facility with the following conditions:

7 (a) The court may not order placement for evaluation at a youth correctional facility of a youth who
 8 has committed an offense that would not be a criminal offense if committed by an adult or a youth who
 9 has violated an informal consent adjustment,

10 (b) The court may require the youth's parents or guardians to pay a contribution covering all or a
 11 part of the costs of the evaluation if the court determines after an examination of financial ability that the
 12 parents or guardians are able to pay the contribution.

13 (15) order placement of a youth in a youth assessment placement for up to 10 days.

14 (2) When a youth is committed to the department, the department shall determine the appropriate
 15 placement and rehabilitation program for the youth after considering the recommendations made under
 16 41-5-527 by the youth placement committee. Placement is subject to the following limitations:

17 (a) A youth in need of supervision or adjudicated delinquent for commission of an act that would
 18 not be a criminal offense if committed by an adult may not be placed in a state youth correctional facility,

19 (b) A youth may not be held in a state youth correctional facility for a period of time in excess of
 20 the maximum period of imprisonment that could be imposed on an adult convicted of the offense or
 21 offenses that brought the youth under the jurisdiction of the youth court. This section does not limit the
 22 power of the department to enter into an aftercare agreement with the youth pursuant to 52-5-126,

23 (c) A youth may not be placed in or transferred to a penal institution or other facility used for the
 24 execution of sentence of adults convicted of crimes,

25 (3) A youth placed in a state youth correctional facility or other facility or program operated by the
 26 department or who signs an aftercare agreement under 52-5-126 must be supervised by the department,
 27 A youth who is placed in any other placement by the department, the youth court, or the youth court's
 28 juvenile probation officer must be supervised by the probation officer of the youth court having jurisdiction
 29 over the youth under 41-5-205 whether or not the youth is committed to the department. Supervision by
 30 the youth probation officer includes but is not limited to:

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(c) submitting information and documentation necessary for the person, committee, or team that is making the placement recommendation to determine an appropriate placement for the youth;

(b) securing approval for payment of special education costs from the youth's school district of residence or the office of public instruction, as required in Title 20, chapter 7, part 4;

(c) submitting an application to a facility in which the youth may be placed; and

(d) case management of the youth.

(4) The youth court may order a youth to receive medical or psychological evaluation at any time prior to final disposition if the youth waives the youth's constitutional rights in the manner provided for in 41-5-203. The county determined by the court as the residence of the youth is responsible for the cost of the evaluation, except as provided in subsection (5). A county may contract with the department or other public or private agencies to obtain evaluation services ordered by the court.

(5) The youth court shall determine the financial ability of the youth's parents to pay the cost of an evaluation ordered by the court under subsection (4). If they are financially able, the court shall order the youth's parents to pay all or part of the cost of the evaluation.

(6) The youth court may not order placement or evaluation of a youth at a state youth correctional facility unless the youth is found to be a delinquent youth or is alleged to have committed an offense that is transferable to criminal court under 41-5-208.

(7) An evaluation of a youth may not be performed at the Montana state hospital unless the youth is transferred to the district court under 41-5-208, 41-5-209, or 41-5-1105.

(8) An order of the court may be modified at any time. In the case of a youth committed to the department, an order pertaining to the youth may be modified only upon notice to the department and subsequent hearing.

(9) Whenever the court commits a youth to the department, it shall transmit with the dispositional judgment copies of medical reports, social history, material, education records, and any other clinically predispension, or other reports and information pertinent to the care and treatment of the youth.

(10) If a youth is committed to the department, the court shall examine the financial ability of the youth's parents or guardians to pay a contribution covering all or part of the costs for the care, commitment, and treatment of the youth, including the costs of necessary medical, dental, and other health care.

(11) If the court determines that the youth's parents or guardians are financially able to pay a

contribution as provided in subsection (10), the court shall order the youth's parents or guardians to pay an amount based on the uniform child support guidelines adopted by the department of public health and human services pursuant to 40-5-209.

(12) (a) Except as provided in subsection (12)(b), contributions ordered under this section and each modification of an existing order are enforceable by immediate or delinquent income withholding or both, under Title 40, chapter 5, part 4. An order for contribution that is inconsistent with this section is nevertheless subject to withholding for the payment of the contribution without need for an amendment of the support order or for any further action by the court.

(b) A court ordered exception from contributions under this section must be in writing and be included in the order. An exception from the immediate income withholding requirement may be granted if the court finds there is:

(i) good cause not to require immediate income withholding; or

(ii) an alternative arrangement between the department and the person who is ordered to pay contributions.

(c) A finding of good cause not to require immediate income withholding must, at a minimum, be based upon:

(i) a written determination and explanation by the court of the reasons why the implementation of immediate income withholding is not in the best interests of the youth; and

(ii) proof of timely payment of previously ordered support in cases involving modification of contributions ordered under this section.

(d) An alternative arrangement must:

(i) provide sufficient security to ensure compliance with the arrangement;

(ii) be in writing and be signed by a representative of the department and the person required to make contributions; and

(iii) if approved by the court, be entered into the record of the proceeding.

(13) Upon a showing of a change in the financial ability of the youth's parents or guardians to pay, the court may modify its order for the payment of contributions required under subsection (11).

(14) (a) If the court orders the payment of contributions under this section, the department shall apply to the department of public health and human services for support enforcement services pursuant to Title IV-D of the Social Security Act.

(b) The department of public health and human services may collect and enforce a contribution order under this section by any means available under law, including the remedies provided for in Title 40, chapter 5, parts 2 and 4."

NEW SECTION, Section 33. Disposition -- delinquent youth -- restrictions. (1) If a youth is found to be a delinquent youth, the youth court may enter its judgment making one or more of the following dispositions:

(a) any one or more of the dispositions provided in 41-5-523;

(b) subject to 41-5-523(3)(b) or (14)(e), [section 34(1)], and [section 35(2)], sentence a youth to one of the state youth correctional facilities established under 52-5-101 and, as part of the sentence, deny the youth eligibility for release without the express approval of the sentencing judge until the youth reaches 18 years of age. A youth may not be sentenced to a state youth correctional facility unless the department informs the judge that space is available for the youth at that facility. Except as provided in subsection (2), the sentencing judge may not place limitations on the release unless recommended by the youth placement committee.

(c) require a youth found to be a delinquent youth, as the result of the commission of an offense that would be a violation of 45-5-502 through 45-5-504, or 45-5-507 if committed by an adult, to register as a sex offender pursuant to Title 46, chapter 23, part 5. The youth court shall retain jurisdiction in a disposition under this subsection.

(d) in the case of a delinquent youth who is determined by the court to be a serious juvenile offender or a juvenile determined to have violated a consent decree with petition or a condition of probation, the judge may specify that the youth be placed in a state youth correctional facility, subject to the provisions of subsection (2), if the judge finds that the placement is necessary for the protection of the public. The court may order the department to notify the court within 5 working days before the proposed release of a youth from a youth correctional facility. Once a youth is committed to the department for placement in a state youth correctional facility, the department is responsible for determining an appropriate date of release into an appropriate placement.

(e) impose a fine as authorized by law if the violation alleged would constitute a criminal offense if committed by an adult.

(2) If a youth has been adjudicated for a sex offense, the youth court may require successful

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completion of sex offender treatment before a youth is discharged.

NEW SECTION, Section 34. Disposition -- commitment to department -- restrictions on placement. When a youth is committed to the department, the department shall determine the appropriate placement and rehabilitation program for the youth after considering the recommendations made under 41-5-527 by the youth placement committee. Placement is subject to the limitations contained in 41-5-523(3)(b) and the following limitations:

(1) A youth may not be held in a state youth correctional facility for a period of time in excess of the maximum period of imprisonment that could be imposed on an adult convicted of the offense or offenses that brought the youth under the jurisdiction of the youth court. This section does not limit the power of the department to enter into an aftercare agreement with the youth pursuant to 52-5-126.

(2) A youth may not be placed in or transferred to a state adult correctional facility or other facility used for the execution of sentences of adults convicted of crimes.

NEW SECTION, Section 35. Disposition -- finding of mentally ill or seriously mentally ill -- rights -- limitation on placement. (1) A youth who is found to be seriously mentally ill, as defined in 53-21-102, is entitled to all rights provided by 53-21-114 through 53-21-119.

(2) A youth who, prior to placement or sentencing, is found to be mentally ill, as defined in 41-5-103, or seriously mentally ill, as defined in 53-21-102, may not be committed or sentenced to a state youth correctional facility.

(3) A youth who is found to be mentally ill or seriously mentally ill after placement in or sentencing to a state youth correctional facility must be moved to a more appropriate placement in response to the youth's mental health needs and consistent with the disposition alternatives available in 53-21-127.

NEW SECTION, Section 36. Disposition -- commitment to department -- supervision. (1) A youth placed in a state youth correctional facility or other facility or program operated by the department or who signs an aftercare agreement under 52-5-126 must be supervised by the department.

(2) A youth who is placed in any other placement by the department, the youth court, or the youth court's juvenile probation officer must be supervised by the probation officer of the youth court having jurisdiction over the youth under 41-5-205 whether or not the youth is committed to the department.

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1 Supervision by the youth probation officer includes but is not limited to:

- 2 (a) submitting information and documentation necessary for the person, committee, or team that
- 3 is making the placement recommendation to determine an appropriate placement for the youth;
- 4 (b) securing approval for payment of special education costs from the youth's school district of
- 5 residence or the office of public instruction, as required in Title 20, chapter 7, part 4;
- 6 (c) submitting an application to a facility in which the youth may be placed; and
- 7 (d) case management of the youth.

8 NEW SECTION. Section 37. Disposition -- commitment to department -- transfer of records.

9 Whenever the court commits a youth to the department, it shall transmit with the dispositional judgment
 10 copies of medical reports, social history material, family assessment material, education records, and any
 11 other clinical, predisposition, or other reports and information pertinent to the care and treatment of the
 12 youth.

13
 14
 15 NEW SECTION. Section 38. Disposition -- medical or psychological evaluation of youth. (1) The
 16 youth court may order a youth to receive a medical or psychological evaluation at any time prior to final
 17 disposition if the youth waives the youth's constitutional rights in the manner provided for in 41-5-303. The
 18 county determined by the court as the residence of the youth is responsible for the cost of the evaluation,
 19 except as provided in subsection (2). A county may contract with the department or other public or private
 20 agencies to obtain evaluation services ordered by the court.

21 (2) The youth court shall determine the financial ability of the youth's parents or guardians to pay
 22 the cost of an evaluation ordered by the court under subsection (1). If they are financially able, the court
 23 shall order the youth's parents or guardians to pay all or part of the cost of the evaluation.

24 (3) Subject to 41-5-523(14)(a), the youth court may not order an evaluation or placement of a
 25 youth at a state youth correctional facility unless the youth is found to be a delinquent youth or is alleged
 26 to have committed an offense that is transferable to district court under 41-5-206.

27 (4) An evaluation of a youth may not be performed at the Montana state hospital unless the youth
 28 is transferred to the district court under 41-5-206, 41-5-208, or 41-5-1105.

29
 30 NEW SECTION. Section 39. Modification of court orders -- notice to department -- hearing. (1)

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1 An order of the court may be modified at any time.

2 (2) In the case of a youth committed to the department, an order pertaining to the youth may be
 3 modified only upon notice to the department and a subsequent hearing.

4
 5 NEW SECTION. Section 40. Contribution for costs -- order for contribution -- exceptions --
 6 collection. (1) If a youth is committed to the department, the court shall examine the financial ability of
 7 the youth's parents or guardians to pay a contribution covering all or part of the costs for the adjudication,
 8 disposition, supervision, care, commitment, and treatment of the youth, including the costs of necessary
 9 medical, dental, and other health care.

10 (2) If the court determines that the youth's parents or guardians are financially able to pay a
 11 contribution as provided in subsection (1), the court shall order the youth's parents or guardians to pay an
 12 amount attributable to care, custody, and treatment based on the uniform child support guidelines adopted
 13 by the department of public health and human services pursuant to 40-5-209.

14 (3) (a) Except as provided in subsection (3)(b), contributions ordered under this section and each
 15 modification of an existing order are enforceable by immediate or delinquency income withholding, or both,
 16 under Title 40, chapter 5, part 4. An order for contribution that is inconsistent with this section is
 17 nevertheless subject to withholding for the payment of the contribution without need for an amendment
 18 of the support order or for any further action by the court.

19 (b) A court-ordered exception from contributions under this section must be in writing and must
 20 be included in the order. An exception from the immediate income withholding requirement may be granted
 21 if the court finds that there is:

22 (i) good cause not to require immediate income withholding; or

23 (ii) an alternative arrangement between the department and the person who is ordered to pay
 24 contributions.

25 (c) A finding of good cause not to require immediate income withholding must, at a minimum, be
 26 based upon:

27 (i) a written determination and explanation by the court of the reasons why the implementation of
 28 immediate income withholding is not in the best interests of the youth; and

29 (ii) proof of timely payment of previously ordered support in cases involving modification of
 30 contributions ordered under this section.

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- 1 (d) An alternative arrangement must:
 2 (i) provide sufficient security to ensure compliance with the arrangement;
 3 (iii) be in writing and be signed by a representative of the department and the person required to
 4 make contributions; and
 5 (iii) If approved by the court, be entered into the record of the proceeding.
 6 (4) Upon a showing of a change in the financial ability of the youth's parents or guardians to pay,
 7 the court may modify its order for the payment of contributions required under subsection (2).
 8 (5) (a) If the court orders the payment of contributions under this section, the department shall
 9 apply to the department of public health and human services for support enforcement services pursuant
 10 to Title IV-D of the Social Security Act.
 11 (b) The department of public health and human services may collect and enforce a contribution
 12 order under this section by any means available under law, including the remedies provided for in Title 40,
 13 chapter 5, parts 2 and 4.

15 Section 41. Section 41-5-524, MCA, is amended to read:

16 "41-5-524. Consent decree with petition. (1) At any time (b) Subject to the provisions of
 17 subsection (2), after the filing of a petition alleging that a youth is a delinquent youth or a youth in need
 18 of supervision under 41-5-501 and before the entry of a judgment, the court may, on motion of counsel
 19 for the youth or on the court's own motion, suspend the proceedings and continue the youth under
 20 supervision under terms and conditions negotiated with probation services and agreed to by all necessary
 21 parties. The court's order continuing the child under supervision under this section shall be known as a
 22 "consent decree". The Except as provided in subsection (1)(b), the procedures used and dispositions
 23 permitted under this section shall must conform to the procedures and dispositions specified in 41-5-401
 24 through 41-5-403 relating to consent adjustments without petition and the responsibility of the youth's
 25 parents or guardians to pay a contribution for the costs of placement in substitute care.

26 (b) A youth may be placed in detention for up to 10 days on a space-available basis.

27 (2) A consent decree under this section may not be used by the court unless the youth admits guilt
 28 for any charges of an offense set forth in the petition and accepts responsibility for the youth's actions.

29 (2)(3) If the youth or his the youth's counsel objects to a consent decree, the court shall proceed
 30 to findings, adjudication, and disposition of the case.

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1 (3)(4) If, either prior to discharge by probation services or expiration of the consent decree, a new
 2 petition alleging that the youth is a delinquent youth or a youth in need of supervision intervention is filed
 3 against the youth or if the youth fails to fulfill the expressed terms and conditions of the consent decree,
 4 the petition under which the youth was continued under supervision may be reinstated in the discretion of
 5 the county attorney in consultation with probation services. In the event of reinstatement, the proceeding
 6 on the petition shall must be continued to conclusion as if the consent decree had never been entered.
 7 (4)(5) A youth who is discharged by probation services or who completes a period under
 8 supervision without reinstatement of the original petition may not again be proceeded against in any court
 9 for the same offense alleged in the petition, and the original petition shall must be dismissed with prejudice.
 10 Nothing in this This subsection precludes does not preclude a civil suit against the youth for damages
 11 arising from his the youth's conduct.

12 (5)(6) In all cases where in which the terms of the consent decree shall extend for a period in
 13 excess of 6 months, the probation officer shall at the end of each 6-month period submit a report which
 14 shall that must be reviewed by the court.

15 (7) A consent decree with petition under this section may not be used to dispose of a youth's
 16 alleged second or subsequent offense if that offense would be a felony if committed by an adult."

18 Section 42. Section 41-5-525, MCA, is amended to read:

19 "41-5-525. Youth placement committees -- composition. (1) In each judicial district, the
 20 department shall establish a youth placement committee for the purposes of:

21 (a) recommending an appropriate placement of a youth referred to the department under 41-5-403;

22 or

23 (b) recommending available community services or alternative placements whenever a change is
 24 required in the placement of a youth who is currently in the custody of the department under 41-5-523.
 25 However, the committee may not substitute its judgment for that of the superintendent of a state youth
 26 correctional facility regarding the discharge of a youth from the facility.

27 (2) The committee consists of not less than five members and must include persons who are
 28 knowledgeable about the youth, treatment and placement options, and other resources appropriate to
 29 address the needs of the youth. Members may include:
 30 (a) two representatives of the department;

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(2) Petitions to revoke probation ~~shall~~ must be screened, reviewed, and prepared in the same manner and ~~shall~~ must contain the same information as petitions alleging delinquency or need of ~~supervision~~ intervention. Procedures of the Montana Youth Court Act regarding taking into custody and detention ~~shall~~ apply. The petition ~~shall~~ must state the terms of probation alleged to have been violated and the factual basis for ~~each~~ the allegations.

(3) The standard of proof in probation revocation proceedings is the same standard used in probation revocation of an adult, and the hearing ~~shall~~ must be before the youth court without a jury. In all other respects, proceedings to revoke probation are governed by the procedures, rights, and duties applicable to proceedings on petitions alleging that the youth is delinquent or a youth in need of ~~supervision~~ intervention. If a youth is found to have violated a term of the probation, the youth court may make any judgment of disposition that could have been made in the original case.

Section 45. Section 41-5-503, MCA, is amended to read:

~~"41-5-503. Youth court and department records. (1) Except as provided in subsection (2), all youth court records on file with the clerk of court, including reports of preliminary inquiries, petitions, motions, other filed pleadings, court findings, verdicts, orders, and decrees, are open to public inspection until the records are sealed under 41-5-604.~~

(2) Social, medical, and psychological records, family assessment materials, predispositional studies, and supervision records of probationers, ~~and any report, charge, or allegation that is not adjudicated pursuant to this chapter~~ are open only to the following:

(e) the youth court and its professional staff;

(b) representatives of any agency providing supervision and having legal custody of a youth;

(c) any other person, by order of the court, having a legitimate interest in the case or in the work

of the court;

(d) any court and its probation and other professional staff or the attorney for a convicted party

who had been a party to proceedings in the youth court when considering the sentence to be imposed upon

the party;

(e) the county attorney;

(f) the youth who is the subject of the report or record, after emancipation or reaching the age of

majority;

majority;

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(b) a representative of the department of public health and human services;

(c) either the chief probation officer or the youth's probation officer;

(d) a mental health professional;

(e) a representative of a school district located within the boundaries of the judicial district who

must have personal knowledge of and experience with the youth;

(f) if an Indian child or children are involved, someone, preferably an Indian person, knowledgeable

about Indian culture and family matters;

(g) a parent or guardian; and

(h) a youth services provider.

(3) Committee members serve without compensation.

(4) Notwithstanding the provisions of 41-5-527, the committee may be convened by the

department or the probation officer of the youth court.

~~(5) If a representative of a school district is not included on the committee, the person who~~

~~convened the committee shall inform the school district of the final placement decision for the child."~~

Section 43. Section 41-5-530, MCA, is amended to read:

~~"41-5-530. Parental contributions account -- allocation of proceeds. (1) There is a parental~~

~~contributions account in the state special revenue fund.~~

(2) Contributions paid by the parents and guardians of youth under 41-3-408, 41-5-403, 41-5-523,

or 41-5-524 for care, placement, and treatment must be deposited in the account.

(3) All money in the account, except any amount required to be returned to federal or county

sources, is allocated to the department of public health and human services to carry out its duties under

52-1-103."

Section 44. Section 41-5-533, MCA, is amended to read:

~~"41-5-533. Probation revocation -- disposition. (1) A youth on probation incident to an~~

~~adjudication that he [the youth] is a delinquent youth or a youth in need of supervision [intervention] and who~~

~~is a youth who has violated a term of such probation may be proceeded against in a probation~~

~~revocation proceeding. A proceeding to revoke probation shall must be done by filing in the original~~

~~proceeding a petition styled "petition to revoke probation".~~

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1 (g) a member of a county interdisciplinary child information team formed under 52-2-211 who is
2 not listed in this subsection (2);

3 (h) members of a local interagency staffing group provided for in 52-2-203; and

4 (i) persons allowed access to the records referred to under 45-5-824(7).

5 (3) Any part of records information secured from records listed in subsection (2), when presented
6 to and used by the court in a proceeding under this chapter, must also be made available to the counsel
7 for the parties to the proceedings.

8 (4) After youth court and department records, reports of preliminary inquiries, predispositional
9 studies, and supervision records of probationers are sealed, they are not open to inspection except, upon
10 order of the youth court, for good cause to:

11 (a) those persons and agencies listed in subsection (2); and

12 (b) adult probation professional staff preparing a presentence report on a youth who has reached
13 the age of majority."

14
15 Section 48. Section 41-5-805, MCA, is amended to read:

16 "41-5-805. Youth court records -- public record. Except as provided in 41-5-803, all youth court
17 records on file with the clerk of court related to a youth who is alleged or found to be a youth in need of
18 supervision intervention or a delinquent youth are a public record until the record is sealed under 41-5-804."

19
20 Section 47. Section 41-5-802, MCA, is amended to read:

21 "41-5-802. Shelter care facilities. (1) Counties, cities, or nonprofit corporations may provide by
22 purchase, lease, or otherwise, a shelter care facility.

23 (2) A shelter care facility may be used to provide an appropriately physically restricting setting for
24 youth alleged or adjudicated to be a delinquent youth, a youth in need of supervision intervention, or a
25 youth in need of care.

26 (3) A shelter care facility must be physically separated from any facility housing adults accused
27 or convicted of criminal offenses.

28 (4) State appropriations and federal funds may be received by the counties, cities, or nonprofit
29 corporations for establishment, maintenance, or operation of a shelter care facility.

30 (5) A shelter care facility must be furnished in a comfortable manner.

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1 (8) A shelter care facility may be operated in conjunction with a youth detention facility."

2
3 Section 49. Section 41-5-1004, MCA, is amended to read:

4 "41-5-1004. Distribution of grants -- limitation of funding -- restrictions on use. (1) The board shall
5 award grants on an equitable basis, giving preference to services that will also be used on a regional
6 basis.

7 (2) The board shall award grants to eligible counties:

8 (a) in a block grant in an amount not to exceed 50% of the approved, estimated cost of secure
9 detention; or

10 (b) on a matching basis in an amount not to exceed:

11 (i) 75% of the approved cost of providing holdovers, attendant care, and other alternatives to
12 secure detention, except for shelter care. Shelter care costs must be paid as provided by law.

13 (ii) 50% of the approved cost of programs for the transportation of youth to appropriate detention
14 or shelter care facilities, including regional detention facilities.

15 (3) Based on funding available after the board has funded block grants under subsection (2), the
16 board shall, in cases of extreme hardship in which the transfer of youth court cases to the adult system
17 has placed considerable financial strain on a county's resources, award grants to eligible counties to fund
18 up to 75% of the actual costs of secure detention of youth awaiting transfer. Hardship cases will be
19 addressed at the end of the fiscal year and will be awarded by the board based upon a consideration of the
20 applicant county's past 3 years' expenditures for youth detention and upon consideration of the particular
21 case or cases that created the hardship expenditure for which the hardship grant is requested.

22 (4) Grants under 41-5-1002 may not be used to pay for the cost of youth evaluations. The cost
23 of evaluations must be paid as provided for in 41-5-523 [section 38]."

24
25 Section 49. Section 41-5-1008, MCA, is amended to read:

26 "41-5-1008. Rulemaking authority. The board may adopt rules necessary to implement the
27 provisions of 41-5-1003(13), 41-5-812, and 41-5-1001 through 41-5-1008 and to establish requirements
28 for approved holdovers consistent with the definition of holdover provided in 41-5-103."

29
30 Section 50. Section 41-5-1104, MCA, is amended to read:

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1 *41-5-1104. Disposition in extended jurisdiction prosecutions. (1) If a youth in an extended
 2 jurisdiction prosecution pleads guilty to or is found guilty of an offense described in 41-5-1102(1)(b), the
 3 court shall:

4 (a) Impose one or more juvenile dispositions under 41-5-523 of [section 33]; and

5 (b) Impose an adult criminal sentence, the execution of which must be stayed on the condition that
 6 the youth not violate the provisions of the disposition order and not commit a new offense. If the youth
 7 violates the conditions of the stay or commits a new offense, the adult criminal sentence must be executed
 8 as provided in 41-5-1105.

9 (2) Except as provided in subsection (3), if a youth in an extended jurisdiction prosecution is
 10 convicted of an offense not described in 41-5-1102(1)(b), the court shall adjudicate the youth delinquent
 11 and order a disposition under 41-5-523 [section 33].

12 (3) If a youth in an extended jurisdiction prosecution pleads guilty to an offense not described in
 13 41-5-1102(1)(b), the court may impose, with the youth's consent, a disposition provided under subsection
 14 (1)(b) of this section. If the youth does not consent to disposition under subsection (1)(b), the court shall
 15 impose a disposition as provided under subsection (2)."

17 Section 51. Section 41-5-1105, MCA, is amended to read:

18 *41-5-1105. Execution of adult sentence -- exception -- transfer to district court. (1) If a court
 19 has imposed on a youth an adult criminal sentence stayed under 41-5-1104(1)(b) and the youth violates
 20 the conditions of the stay or is alleged to have committed a new offense, the court may, without notice,
 21 direct that the youth be taken into immediate custody and revoke the stay. The court shall notify the youth
 22 in writing of the reasons for the revocation.

23 (2) (a) If the youth challenges the reasons for the revocation, the court shall hold a summary
 24 hearing at which the youth is entitled to be heard and represented by counsel.

25 (b) After the hearing, if the court finds by a preponderance of the evidence presented that the
 26 conditions of the stay have been violated, the court shall:

27 (i) order execution of the sentence imposed under 41-5-1104(1)(b); or

28 (ii) continue the stay and make written findings regarding the mitigating factors that justify
 29 continuing the stay.

30 (3) If the stay of an adult sentence is revoked under this section, jurisdiction must be transferred

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1 to district court for execution of the sentence, subject to 41-5-206(8) and (9) 41-5-206(4) and (5)."

3 Section 52. Section 45-5-824, MCA, is amended to read:

4 *45-5-824. Unlawful attempt to purchase or possession of an intoxicating substance --
 5 interference with sentence or court order. (1) A person under the age of 21 years of age commits the
 6 offense of possession of an intoxicating substance if the person knowingly consumes or has in the person's
 7 possession an intoxicating substance. The person need not be consuming or in possession of the
 8 intoxicating substance at the time of arrest to violate this subsection. A person does not commit the
 9 offense if the person consumes or gains possession of the beverage because it was lawfully supplied to
 10 the person under 16-6-305 or when in the course of employment it is necessary to possess alcoholic
 11 beverages.

12 (2) In addition to any disposition by the youth court under 41-5-523, a person under 18 years of
 13 age who is convicted of the offense of possession of an intoxicating substance shall:

14 (a) for the first offense, be fined an amount not to exceed \$100 and:

15 (i) have the person's driver's license confiscated by the court for not less than 30 days and not
 16 more than 90 days and be ordered not to drive during that period if the person was driving or was
 17 otherwise in actual physical control of a motor vehicle when the offense occurred;

18 (ii) be ordered to perform community service if a community service program is available; and
 19 (iii) be ordered to complete and pay, either directly with money or indirectly through court-ordered
 20 community service, if any is available, all costs of participation in a community-based substance abuse
 21 information course, if one is available;

22 (b) for a second offense, be fined an amount not to exceed \$200 and:

23 (i) have the person's driver's license suspended for not less than 60 days and not more than 120
 24 days;

25 (ii) be ordered to perform community service if a community service program is available; and

26 (iii) be ordered to complete and pay, either directly with money or indirectly through court-ordered
 27 community service, if any is available, all costs of participation in a community-based substance abuse
 28 information course, if one is available;

29 (c) for a third or subsequent offense, be fined an amount not less than \$300 or more than \$500
 30 and:

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(i) have the person's driver's license suspended for not less than 120 days and not more than 1 year, except that if the person was driving or was otherwise in actual physical control of a motor vehicle when the offense occurred, have the person's driver's license revoked for 1 year or until the person reaches the age of 18, whichever occurs last;

(ii) be ordered to complete and pay, either directly with money or indirectly through court-ordered community service, if any is available, all costs of participation in a community-based substance abuse information course, if one is available, which may include alcohol or drug treatment, or both, approved by the department of corrections, if determined by the court to be appropriate.

(3) A person 18 years of age or older who is convicted of the offense of possession of an intoxicating substance shall:

(a) for a first offense, be fined an amount not to exceed \$50 and be ordered to perform community service if a community service program is available;

(b) for a second offense, be fined an amount not to exceed \$100 and:

(i) be ordered to perform community service if a community service program is available; and

(ii) have the person's driver's license suspended for not more than 80 days if the person was driving or otherwise in actual physical control of a motor vehicle when the offense occurred;

(c) for a third or subsequent offense, be fined an amount not to exceed \$200 and:

(i) be ordered to perform community service if a community service program is available;

(ii) have the person's driver's license suspended for not more than 120 days if the person was driving or otherwise in actual physical control of a motor vehicle when the offense occurred;

(iii) be ordered to complete an alcohol information course at an alcohol treatment program approved by the department of corrections, which may, in the sentencing court's discretion and upon recommendation of a certified chemical dependency counselor, include alcohol or drug treatment, or both; and

(iv) in the discretion of the court be imprisoned in the county jail for a term not to exceed 6 months.

(4) A person under the age of 21 years of age commits the offense of attempt to purchase an intoxicating substance if the person knowingly attempts to purchase an alcoholic beverage. A person convicted of attempt to purchase an intoxicating substance shall be fined an amount not to exceed \$50 if the person was 18 years of age or older at the time the offense was committed or \$100 if the person was under 18 years of age at the time that the offense was committed.

(5) A defendant who fails to comply with a sentence and is under 21 years of age and was under 18 years of age when the defendant failed to comply must be transferred to the youth court. If proceedings for failure to comply with a sentence are held in the youth court, the offender must be treated as an alleged youth in need of supervision intervention as defined in 41-5-103. The youth court may enter its judgment under 41-5-523.

(6) A person commits the offense of interference with a sentence or court order if the person purposely or knowingly causes a child or ward to fail to comply with a sentence imposed under this section or a youth court disposition order for a youth found to have violated this section and upon conviction shall be fined \$100 or imprisoned in the county jail for 10 days, or both.

(7) A conviction or youth court adjudication under this section must be reported by the court to the department of justice under 81-11-101 for the purpose of keeping a record of the number of offenses committed but may not be considered part of the person's driving record for insurance purposes unless a second or subsequent conviction or adjudication under this section occurs. (See compiler's comments for contingent termination of certain text.)"

Section 53. Section 45-5-537, MCA, is amended to read:

"45-5-537. Tobacco possession or consumption by persons under 18 years of age prohibited -- penalties. (1) A person under 18 years of age who knowingly possesses or consumes a tobacco product, as defined in 16-11-302, commits the offense of possession or consumption of a tobacco product.

(2) A person convicted of possession or consumption of a tobacco product:

(a) shall be fined \$35 for a first offense, no less than \$75 or more than \$100 for a second offense, and no less than \$100 or more than \$250 for a third or subsequent offense; or

(b) may be adjudicated on a petition alleging the person to be a youth in need of supervision intervention under the provisions of the Montana Youth Court Act provided for in Title 41, chapter 5.

(3) A person convicted of possession or consumption of a tobacco product may also be required to perform community service or to attend a tobacco cessation program.

(4) The fines collected under subsection (2) must be deposited to the credit of the general fund of the local government that employs the arresting officer, or if the arresting officer is an officer of the highway patrol, the fines must be credited to the county general fund in the county in which the arrest was made."

Section 54. Section 46-18-256, MCA, is amended to read:

~~46-18-256.~~ Sexually transmitted disease testing -- test procedure. (1) Following entry of judgment, a person convicted of a sexual offense, as defined in 46-23-502, must, at the request of the victim of the sexual offense or the parent or guardian of the victim, if the victim is a minor, be administered standard testing according to currently accepted protocol, using guidelines established by the centers for disease control, U.S. department of health and human services, to detect in the person the presence of antibodies indicative of the presence of human immunodeficiency virus (HIV) or other sexually transmitted diseases, as defined in 50-18-101.

(2) Arrangements for the test required by subsection (1) must be made by the county attorney of the county in which the person was convicted. The test must be conducted by a health care provider, as defined in 50-18-504.

(3) The county attorney of the county in which the person was convicted shall release the information concerning the test results to:

(a) the convicted person; and
(b) the victim of the offense committed by the convicted person or to the parent or guardian of the victim if the victim is a minor.

(4) At the request of the victim of a sexual offense or the parent or guardian of the victim if the victim is a minor, the victim must be provided counseling regarding HIV disease, HIV testing (in accordance with applicable law), and referral for appropriate health care and support services.

(5) For purposes of this section, "convicted" includes an adjudication, under the provisions of 41-5-521, finding a youth to be a delinquent youth or a youth in need of supervision intervention.

(6) The provisions of the AIDS Prevention Act, Title 50, chapter 16, part 10, do not apply to this section."

Section 55. Section 46-24-207, MCA, is amended to read:

~~46-24-207.~~ Victims and witnesses of juvenile felony offenses -- consultation -- notification of proceedings. (1) The attorney general shall ensure that the services and assistance that must be provided under this chapter ~~Title 46, chapter 24,~~ to a victim or witness of a crime are also provided to the victim or witness of a juvenile felony offense.

(2) In a proceeding filed under Title 41, chapter 5, part 5, the county attorney or a designee shall

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consult with the victim of a juvenile felony offense ~~or, in the case of a minor victim or a homicide victim, with the victim's family~~ regarding the disposition of the case, including:

(a) a dismissal of the petition filed under 41-5-501;

(b) a reduction of the charge to misdemeanor;

(c) the release of the youth from detention or shelter care pending the adjudicatory hearing; and

(d) the disposition of the youth.

(3) (e) Whenever possible, a person described in subsection (3)(b) who provides the youth court with a current address and telephone number must receive prompt advance notification of youth court case proceedings, including:

(i) the filing of a petition under 41-5-501;

(ii) the release of the youth from detention or shelter care; and

(iii) proceedings in the adjudication of the petition, including, when applicable, entry of a consent decree under 41-5-524, the setting of a date for the adjudicatory hearing under 41-5-521, the setting of a date for the dispositional hearing under 41-5-522, the disposition made, and the release of the youth from a youth correctional facility.

(b) A person entitled to notification under this subsection (3) must be a victim, as defined in 41-5-103, of a juvenile felony offense, an adult relative of the victim if the victim is a minor or an adult relative of a homicide victim.

(c) The county attorney or a designee that provides the consultation regarding the disposition of a case required in subsection (2) shall give the victim the opportunity to provide the victim's current telephone number and address and shall forward the information to the youth court for notification purposes under this subsection (3).

(d) The court shall provide to the department of justice the list of people entitled to notification under this subsection (3), and the department of justice is responsible to provide the notification.

(4) For purposes of this section, "juvenile felony offense" means an offense committed by a juvenile that, if committed by an adult, would constitute a felony offense. The term includes any offense for which a juvenile may be declared a serious juvenile offender, as defined in 41-5-103."

Section 56. Section 52-2-211, MCA, is amended to read:

"52-2-211. County interdisciplinary child information team. (1) The following persons and agencies

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1 operating within a county may by written agreement form a county interdisciplinary child information team;

2 (a) the youth court;

3 (b) the county attorney;

4 (c) the department of public health and human services;

5 (d) the county superintendent of schools;

6 (e) the sheriff;

7 (f) the chief of any police force;

8 (g) the superintendents of public school districts; and

9 (h) the department of corrections.

10 (2) The persons and agencies signing a written agreement under subsection (1) may by majority

11 vote allow the following persons to sign the written agreement and join the information team:

12 (a) physicians, psychologists, psychiatrists, nurses, and other providers of medical and mental

13 health care;

14 (b) entities operating private elementary and secondary schools;

15 (c) attorneys; and

16 (d) a person or entity that has or may have a legitimate interest in one or more children that the

17 information team will serve.

18 (3) (a) The members of the information team or their designees may form one or more auxiliary

19 teams for the purpose of providing service to a single child, a group of children, or children with a particular

20 type of problem or for any other purpose. Auxiliary teams are subject to the written agreement.

21 (b) A member of an auxiliary team must be a person who has personal knowledge of or experience

22 with the child or children in the member's respective field.

23 (4) The purpose of the team and written agreement is to facilitate the exchange and sharing of

24 information that one or more team members may be able to use in serving a child in the course of their

25 professions and occupations, including but not limited to abused, or neglected, and delinquent children,

26 delinquent youth, and youth in need of supervision intervention. Information regarding a child that a team

27 member supplies to other team members or that is disseminated to a team member under 41-3-205 or

28 41-5-803(2) may not be disseminated beyond the team.

29 (5) The terms of the written agreement must provide for the rules under which the team will

30 operate, the method by which information will be shared, distributed, and managed, and any other matters

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1 necessary to the purpose and functions of the team.

2 (6) The terms of the written agreement must state how the team will coordinate its efforts with

3 interdisciplinary child protective teams as provided in 41-3-108 and youth placement committees as

4 provided for in 41-5-525."

5

6 Section 57. Section 52-5-101, MCA, is amended to read:

7 "52-5-101. Establishment of state youth correctional facilities -- prohibitions. (1) The department

8 of corrections, within the annual or biennial budgetary appropriation, may establish, maintain, and operate

9 facilities to properly diagnose, care for, train, educate, and rehabilitate youth in need of these services. The

10 youth must be 10 years of age or older and under 19 years of age. The facilities include but are not limited

11 to the state youth correctional facilities at the ~~Mountain View school in Helena and the Pine Hills school~~

12 in Miles City.

13 (2) A youth alleged or found to be a youth in need of supervision intervention may not be placed

14 in a state youth correctional facility as defined in 41-5-103."

15

16 Section 58. Section 53-1-201, MCA, is amended to read:

17 "53-1-201. Purpose of department of corrections. The department of corrections shall utilize use

18 at maximum efficiency the resources of state government in a coordinated effort to:

19 (1) develop and maintain comprehensive services and programs in the field of adult and youth

20 corrections; and

21 (2) provide for the care, protection, and mental and physical development of youth alleged to be

22 youth in need of supervision intervention or delinquent youth who are referred or committed to the

23 department."

24

25 Section 59. Section 53-1-203, MCA, is amended to read:

26 "53-1-203. Powers and duties of department of corrections. (1) The department of corrections

27 shall:

28 (a) adopt rules necessary to carry out the purposes of 41-5-527 through 41-5-529 and rules for

29 the admission, custody, transfer, and release of persons in department programs except as otherwise

30 provided by law. However, rules adopted by the department may not amend or alter the statutory powers

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- (i) provide supervision, care, and control of youth released from a state youth correctional facility;
- (m) use to maximum efficiency the resources of state government in a coordinated effort to:
- (i) provide for children in need of temporary protection or correctional services; and
- (ii) coordinate and apply the principles of modern institutional administration to the institutions in the department.
- (2) The department and a private, nonprofit Montane corporation may not enter into a contract under subsection (1)(c) for a period that exceeds 10 years. The provisions of 18-3-104 and 18-4-313 that limit the term of a contract do not apply to a contract authorized by subsection (1)(c).
- (3) The department of corrections may enter into contracts with nonprofit corporations or associations or private organizations to provide substitute care for youth in need of ~~supervision~~ intervention and delinquent youth in youth care facilities."

NEW SECTION, Section 60. Repealer. Section 41-5-310, MCA, is repealed.

NEW SECTION, Section 61. Funding coordination. For the purposes of Title 1, chapter 2, part 1, the funding for this bill is contained in __ Bill No. __ ILC 228).

NEW SECTION, Section 62. Directions to code commissioner. Wherever a reference to "youth in need of supervision" appears in the Montane Code Annotated or in legislation enacted by the 1997 legislature, the code commissioner is directed to change it to an appropriate reference to "youth in need of intervention".

NEW SECTION, Section 63. Codification instruction. (1) [Sections 31 and 33 through 40] are intended to be codified as an integral part of Title 41, chapter 5, and the provisions of Title 41, chapter 5, apply to [sections 31 and 33 through 40].

(2) Section 48-24-207 is intended to be renumbered and codified as an integral part of Title 41, chapter 5, part 5.

NEW SECTION, Section 64. Saving clause. [This act] does not effect rights and duties that

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- (b) subject to the functions of the department of administration, lease or purchase lands for use by institutions and classify those lands to determine those that may be most profitably used for agricultural purposes, taking into consideration the needs of all institutions for the food products that can be grown or produced on the lands and the relative value of agricultural programs in the treatment or rehabilitation of the persons confined in the institutions;
- (c) contract with private, nonprofit Montane corporations to establish and maintain community-based prerelease centers for purposes of preparing inmates of the Montane state prison who are approaching parole eligibility or discharge for release into the community. The centers shall provide a less restrictive environment than the prison while maintaining adequate security. The centers must be operated in coordination with other department correctional programs, including the supervised release program provided for in Title 48, chapter 23, part 4. This subsection does not affect the department's authority to operate and maintain community-based prerelease centers.
- (d) utilize the staff and services of other state agencies and units of the Montane university system, within their respective statutory functions, to carry out its functions under this title;
- (e) propose programs to the legislature to meet the projected long-range needs of institutions, including programs and facilities for the diagnosis, treatment, care, and aftercare of persons placed in institutions;
- (f) encourage the establishment of programs at the local and institutional level for the rehabilitation and education of adult felony offenders;
- (g) administer all state and federal funds allocated to the department for youth in need of ~~supervision~~ intervention and delinquent youth, as defined in 41-5-103;
- (h) collect and disseminate information relating to youth in need of ~~supervision~~ intervention and delinquent youth;
- (i) maintain adequate data on placements that it funds in order to keep the legislature properly informed of the specific information, by category, related to youth in need of ~~supervision~~ intervention and delinquent youth in out-of-home care facilities;
- (j) provide funding for and place youth who are alleged or adjudicated to be delinquent or in need of ~~supervision~~ intervention and who are referred or committed to the department;
- (k) administer youth correctional facilities;

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1 matured, penalties that were incurred, or proceedings that were begun before [the effective date of this
2 act].

3

4 NEW SECTION, Section 65. Effective date. [This act] is effective July 1, 1997.

5

-END-

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